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89-254

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JAMES A. MARKER, JR., AND BEVERLY J. MARKER,

Petitioners,

v.

WAYNE K. RIESCHEL, et al.

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

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QUESTIONS PRESENTED

1. Whether tolling under 50 USC Appx. sec. 525 applies to an action that has already been duly filed and served under the applicable statute of limitations. The 8th Cir.Ct. says yes, the 3rd Cir.Ct. and the Sup.Ct. Penn. say no.

2. Whether 50 USC Appx. sec. 525 applies to career service persons as implied by the 8th Cir.Ct. or does not apply to a career serviceman as held by the 11th Cir.Ct.

3. Whether a stay shall be granted under 50 USC Appx. sec. 521 when the trial court's finds the ability of the plaintiff to prosecute an action is materially affected by his military service or words to that effect: "...will accept the facts ... relative to the interference of his military service in effectively prosecuting this case...".

4. Whether a dismissal without prejudice of a military plaintiff's action, for damages, after the statute of limitations has run for co-plaintiffs violates the seventh amendment or other rights of co-plaintiff when "Demand for Jury Trial" was made on complaint.

5. Whether any factors taken into consideration should be any different for military plaintiff under 50 USC App. sec. 501 et seq., than military defendant when a sec. 521 stay is sought, and plaintiff has prayed for an injunction to prevent irreparable injury in the interim.

6. Whether abstention is fatal defect in a case where a service man is seeking a Stay and injunctive relief under the Soldiers' and Sailors' Civil Relief Act, when the service man is not party to any other action, and the issues raised will not be addressed in any action a co-plaintiff may be a party to.

7. Whether when a defendant party is in default, can the military plaintiff ask the Court to consider the constitutionality of any act, system, law, or relief requested as it pertains to the party in default when the request for a Stay is acted upon.

[The 7th question contains within it subsidiary questions that fall well within the injunctive relief (36a-39a) asked for in the complaint filed Nov. 27, 1987, some examples follow.]

7a. Whether Dallas County refusal to provide the services of the sheriff's and prosecutor's office on a equal basis to plaintiffs violates plaintiff's rights to equal protection.

7b. Whether Dallas County has an obligation to select those in the local justice system by a method that assures plaintiff's a fair decisional process and an impartial decisionmaker. Does lack of

such system violate plaintiff's right's to due process or other rights.

7c. Whether Dallas County has a duty under the U.S. Constitution to respect all federally protected rights and to take positive or affirmative action to assure due process and equal protection of the laws to all that come within their jurisdiction, for example the plaintiffs.

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Party in Default: Dallas County, Mo.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JAMES A. MARKER, JR., et al.

Petitioners,

v.

WAYNE K. RIESCHEL, et al.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners James and Beverly Marker respectfully petition for a writ of certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit and the decision of the District Court in this case.

OPINIONS BELOW

The opinion of the court of appeals is not reported. (1a-6a). The two orders and judgment of the district court are

not reported. (6a-13a). However, photo-copies of the above and some of the other appended materials were filed with this court on May 26, 1989 when additional time was requested.

JURISDICTION

The opinion of the court of appeals (1a-6a) was entered on January 9, 1989. A petition for rehearing was denied March 8, 1989 (1a). On May 30, 1989 Associate Justice Harry A. Blackmun of the Supreme Court extended the time within which to file a petition for a writ of certiorari to July 6, 1989 and on June 26, 1989 further extended the time to August 5, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 50 USCS Appx sec. 525 (78a-79a) of main interest. Also mentioned: 50 USCS Appx sec. 521 (75a-76a).

2. 50 USCS Appx sec. 525 (78a-79a) of main interest. Also mentioned: 50 USCS Appx sections 464, 466 (c) (70a) 511, (71a-72a), 521 (75a-76a).

3. 50 USCS Appx sec. 521 of main interest (75a-76aa). Also: sec. 525 (78a-79a).

4. The 7Th amendment to the United States Constitution (57a) of main interest. Also mentioned: the 1st, 5th, & 9th amendments (56a-57a) and Art. IV, sec. 2 par. 1 privileges and immunities (55a-56a).

5. 50 USCS Appx sec. 501 et seq., in relevant part (69a-79a). Fed.R.Civ.P. Rules 15 & 19 (80a-81a). Fed.R.Civ.P. Local Rule 1.F. (39a-41a) Western Dist. of Mo.

6. Art. III, sec. 2, par. 1 (55a) 50 USCS Appx sec. 501 et seq. is also mentioned (69a-79a).

7. Mo. Law 56.360 (87a-88a), Fed.R.Civ.P. 4 (80a) and 55 (81a-82a), Mo. Law 506.140 and 506.150 (83a-84a), of main interest.

Also mentioned: Mo. Law: 56.010, 56.060, 56.065, 56.070, 56.110, 56.631 (84a-88a); U.S. Const. (55a-58a), 42 USC sections 1983, 1985, 1986, 1988 (61a-69a). Mo. Const. Art.5 sec.16 (page 50).

JURISDICTION OF THE DISTRICT COURT

The cause of action stated on the civil cover sheet was:

> "U.S. Constitutional and other State and Federal Violations including but not limited to: 42 USC 1985 & 42 USC 1983 and others, both Federal and State." The Federal Question and Diversity blocks were marked.

Diversity and amount in controversy exceeds $10,000 exclusive of costs and interest were also mentioned in the complaint. All this seems basically to be covered by: 28 USC sections 1331, 1332, 1343 (59a-61a)

At the end of the appendix is a list of contents where the page location of each item in the appendix may be found for easy reference. I have tried to include whatever law may be relevant herein.

References to pages followed by the letter "a" are to the Appendix to the Petition for Certiorari.

STATEMENT

In 1940, Congress enacted the Soldiers' and Sailors' Civil Relief Act (to replace the earlier Act of 1918) to protect the legal and other interests of servicemen and their families. It has been in the Nation's military defense interest in both times of peace and war to provide the protection this Act offers. Congress has shown their continued support for the Act by reviewing it and making amendments from time to time over the last 71 years.

The first six questions are primarily federal questions about the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, revised and as it is applicable to this case, also referred to as 50 USC Appx. sec. 501 et seq. (69a-79a). Part of the matter before this Court at this time, in the first six questions, is whether or not a Stay under sec. 521 of the Act (75a-76a) and the additional

relief requested should have been granted by the district court or whether the action taken by the district court: to dismiss without prejudice, holding out sec. 525 of the Act (78a-79a) as protection for both plaintiffs will protect this service man and his family under tbe Act as congress intended.

Several of the questions mentioned above involve conflict between the different appeals courts or where state courts of last resort disagree with appeals courts. Constitutional questions that have not, but should be answered by this Court for all those so situated, are part of the 6th and 7th question.

The complaint contained: "Demand for Jury Trial"; prayer for monetary damages for injures suffered and an injunction sought to avoid further irreparable injury; also a request to amend at a later date for the pro se plaintiffs.

The action taken by the district court amounts to a final judgment as far as co-plaintiff is concerned because, as the appeals court and other courts has agreed the tolling provision does not apply to military dependents as some other parts of the Act do. The district court had the duty to stay the action, under the Act sec. 521 in regards to all parties: plaintiffs and also non-military defendants, once they accepted the fact that Major Marker's military duty did in fact materially affect, or interfered in his "effectively prosecuting this case". sec. 511, 513, 521 (71a-73a, 75a-76a).

We, the petitioners, do not believe the opinion of the appeals court correctly reflects the facts in this case, both as mentioned above and in the following:

The injunction that was requested was quite different than what was understood or stated by the appeals court. We filed

this case asking for injunctive relief, that would compel the county to provide equal protection and services on an equal basis with other citizens (and reforms) so that our family and I could hopefully be safe in the area to facilitate a resolution of problems that could not be done by long distance. As you can see from the injunction requested in the complaint, a state action was never asked to be stayed by the Fed. Cts. (36a-39a).

A reading of the request for injunctive relief and Attorney Lynch's letter (41a-47a), and other items from the District Court record will reveal the true nature and purpose of the request for injunctive relief. Please see Major Markers letter (25a-27a, par 15-25) also.

Without law enforcement protection I cannot remain in the area long enough to resolve anything. We have been trying to find a way to get the law enforcement

protection we need ever since these problems began. Attorney Lynch began representing me on a state action in middle of 1986. He had represented my husband earlier in an effort to get a special prosecutor.

The 8Th Circuit Court opinion states that the complaint requested a Stay until 1995 when my husbands service ends, this is in error. My husband does not know, nor did he know when the complaint was written when his service would end (27a para. 24). I later suggested a date because case law seemed to indicate that a date was required.

The seventh question concerns the party in default, Dallas County, and is one that addresses important constitutional questions that again have not but should also be settled by this Court. They are matters that might affect anyone from the larger more heterogeneous population of

the United States who might choose to travel through, or move to, a very rural homogeneous area of this country where hostility exists towards many outsiders, especially those with different beliefs, values, skin color, or with family and friends that are different.

We filed this case because we believed Dallas County, Mo., and the respondents violated our civil rights in several ways, including our rights to equal protection because of the counties refusal to provide the services of the sheriff and prosecutors office on an equal basis with other citizens. Because of this repeated refusal of law enforcement protection in face of a variety of wrongful acts committed by the client of the local county prosecutor, we the petitioners, and our other family members found we could not safely remain in the area and enjoy our property located in

Dallas County, Missouri.

The petitioners are a military couple from Alaska: Major James A. Marker Jr. is a career military man who has devoted his life to law enforcement and the military. He was a Chief of Police and a Squadron Commander when the complaint was filed. The Markers have very equalitarian views and family members of mixed blood, both distant and closer family members, including Indian grandchildren, and also have a well know historical figure on the family tree who was instrumental in abolishing slavery. The petitioners had no problems with the respondents from 1979, when they were transferred from Alaska, until after some of the above, and other similar information, was revealed in 1984. We believe our problems began with, and were motivated by the above revelations. Unknown to us at the time was the fact that white surpremacist

activity was wide spread in the county and area.

Since 1984 there has been wide variety of harassments where the prosecutors client: Mr. Burtin, was either a known participant (sometimes aided by his friends and relatives) or was the only person known to be in the area when various acts occurred, including (amongst many other actions): gun fire near our house; threats of various types; physical assaults; attempt on my life; burning of property; theft and/or damage to property, both real and personal; regular removal of no trespassing signs; efforts to run people off we sent to check on the place after we found it too unsafe to stay there because of the repeated refusal of the sheriff to respond to calls for help, and the lack of help from any other county officials. We believe we will be able to show at trial that Mr.

Burtin and his friends were clearly aided by the actions and inactions of the other respondents and that there was a conspiracy to violate our civil rights. However that is not at issue today.

Jim sought a special prosecutor over only a part of the criminal acts committed (where there was plenty of witnesses and evidence). It was only with great difficulty and expense that one was reluctantly appointed. The appointee immediately dismissed the complaint without looking at our evidence, talking to our witnesses, to us, or Jim's lawyer. We believe we have evidence we could have produced, had the county responded and this matter gone to trial, that the county judge, now the circuit judge, acted inproperly to influence the special prosecutor. In addition he threatened Jim with a writ of execution if he did not pay for the special prosecutor's

services in that criminal action. Jim paid it "under protest" in spite of the fact we had never heard of the victim of a crime being required to do so.

Dallas County is a very rural area with a county seat of 2,217, as of the last census. Because of information and evidence provided to us we have since found out the county to be made up of a very racist electorate who have voted in their sheriff, judge, prosecutor, and circuit judge from individuals who grew up in Dallas County. These officials must depend on the good will of their friends and relatives, to be elected and reelected. In addition the local county prosecutor/attorney is allowed to have private clients. It appears that this practice has clearly become an effective tool of white supremacists in the area who wish to keep the area for their own, without interference from law enforcement and the

justice system.

Dallas County is located in a former slave state that required segregation by state law until this Courts actions caused a change as a result of BROWN v BOARD OF EDUCATION (1954) 347 U.S. 483. That decision is still being struggled with in Missouri's cities, where nearly all her minorities are located, and is yet to be fully and completely implemented there. Little has changed in most of the rural areas that Dallas County is a part of over the years since BROWN except the methods used to maintain the status quo: more covert activity.

There has been very little else to cause Dallas County to evolve in regards to equality and respect for civil rights. In fact we believe quite the opposite is true. The white southerners who settled much of Missouri were hostile to Indians (50a). Today, there are no Indian

reservations in Missouri. The high population of minorities who voted for change in the south since the 1960's are not present. Others who might encourage change, such as ourselves, seem to be systematically ejected from the area.

We believe that such a system itself and the laws and statutes on which it is founded violates our rights to equal protection and other rights, and also the rights of others similarly situated who might move to such an area. We further believe the Burtin law suit in state court was more of a guise and excuse for other activity designed to get us and our family out of the county and to hinder us in obtaining any other relief.

Other materials from the record deemed necessary to clarify the facts for the purpose of this petition for a writ of certiorari are included in the appendix and will be referred to as appropriate.

REASONS FOR GRANTING THE PETITION

1. This Court has never heard a case about a career military plaintiff under 50 USC Appx. sec. 521 (75a-76a) and there are several questions that have not been, but should be, settled by this Court in regards to the Soldiers' and Sailors' Civil Relief Act as it relates to plaintiffs and the Act, and to resolve conflict in the appeals and other courts.

The 8Th Cir. has held that my husband can refile this action later as the statute of limitations is tolled during his military service. This is in direct conflict with what the 3rd Cir. has said in regards to 50 USC Appx sec. 525:

> ZITOMER v HOLDSWORTH (3rd Cir.1971) 449 F.2d 724 at 726, "...This provision affords him no relief; it simply tolls the statute of limitations during the period of military service and has no applicability to an action duly filed and served within the applicable statute of limitations." also:

ZARLINSKY v LAUDENSLAGER (1961 Sup.Ct. Pa.) 167 A.2d 317 at 320 [2] "... this Section expressly applies to the limitation of time for bringing an action, not to a limitation of time for the continuing of process in an action already brought ..."

If tolling is only for the "bringing of any action" we have had no choice except to ask this Court to clarify sec. 525 because to do less would risk the end of even Major Marker's standing.

If the eighth circuit's opinion were to stand it would create a severe burden on both military plaintiffs and defendants. It would mean a military plaintiff who was concerned over the safety of his family could file his case over and over again seeking some sort of injunctive or other relief from the Courts, creating great expense for both plaintiff and defendants. Not to mention the extra burden for the Courts themselves. Whether a service man files an action and

asks for a stay under sec. 521 until he is either out of the service or whether he waits until he is out and files an action under sec. 525, the effect on witnesses and evidence is the same. The same amount of time is passed.

Once a case is filed it appears that the military person should be given reasonable protection, and sec. 521 must be relied upon until he either is out of service or his circumstances change to where he could prosecute his action.

2. There is a conflict over the issue of whether 50 USC sec. 525 is applicable to career service persons between the 11Th Cir. and the 8Th Cir. I believe it was clear to the district and circuit courts that Major Marker is a career serviceman from the papers filed (27a par 24). When a career serviceman is aware of a case by a Federal Appeals Court, such as the following Pannell case, the

only prudent course of action seems to be to file his complaint within the applicable statute of limitations and ask for a Stay under sec. 521:

> PANNELL v. CONTINENTAL CAN CO. (5th Cir. 1977) 554 F2d 216, 225 [13] "We are of the opinion the the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A.App. section 525 is inapplicable to a career service man like Colonel Pannell...."

For a career man to file and ask for a stay seems most appropriate when filing later may not be possible, considering PANNELL, and especially when one is looking for some sort of injunctive relief that will compel county officials to preform their duties because the sheriff will not respond to repeated calls for help and assistance on a variety of dates and situations, even those of a life threatening nature, because the county attorney/prosecutor has, or has had, the perpetrator as a private legal client. What we did was our only option. In

considering which Appeals Circuit is correct I would call your attention to 50 USC Appx sec. 464, 466(c), 511 (38a-40a). It important to us and others so situated to know which court is correct.

McCANCE v. LINDAU 492 A.2d 1352 (Md.App. 1985) at 1355 disagreed with Pannell and offers a good discussion of the Act. The McCance couple had a bad experience but it does not hold a candle to the endless nightmare we have endured. If we were to detail all that happened to our family and ourselves several large volumes would be needed. We have only attempted to give a thumbnail sketch. Another very recent case, in agreement with McCANCE, that was decided since we filed our case is MASON v TEXACO (10th Cir.1988) 862 F.2d 242 at 245.

3. This unprecedented ruling by the Eight Circuit seriously misconstrues and/or is conflict with this Courts

decision in BOONE v LIGHTNER (1943) 319 US 561 at 571-575 in regards to what the obligations are of the district court when it "...accepts the facts as set forth in Major Marker's letter ... relative to the interference of his military service in effectively prosecuting this case." (8a last para. & 11a-13a) if there is any application of BOONE v LIGHTNER to a plaintiffs action.

LIGHTNER v.BOONE (1942 Sup.Ct. N.C.) 22 S.E.2d 426 at 428 [3] further reveals the trial court's reasoning in Boone.

Col. Ash's letter (14a-16a) and some of the other papers in the record makes it very clear that Jim's ability to prosecute was materially affected. Jim even tried to obtain a deferment from the military to remain in Missouri, but was unsuccessful. After that he even submitted papers to leave the military service-terminate his career-just a few

days before he was due to be promoted, but the Air Force turned him down. I do not know what else he could have known to do legally to remain in Missouri to resolve these problems (24a para. 14). We now have copies of much of the Air Force paperwork to substantiate those efforts by my husband. Even as a Commander and officer he did not know what else he could do. Certainly he could not proceed unrepresented from half a continent away, nor forget the problem.

The district court (12a) makes reference to "...to the great prejudice of plaintiffs in that by that time, evidence may be lost and witnesses misplaced." and also talks about the rights of the defendants. As already stated, there is no difference in what happens to evidence or witnesses whether a Stay is granted or the case is tolled and filed later. The same amount of time will have passed. A

stay does not make a judgement on defendant/respondents, only preserves the day for the case to be heard. However, the rights of co-plaintiff are destroyed when a case like this is dismissed rather than stayed, and violates the 7th amendment.

4. I believe the seventh amendment protects the right to a jury trial in a tort action for damages and other relief. A "Demand for Jury Trail" was very clearly made at the end of the complaint. The language was very broad and I feel certain it fell within the common law. For the Federal District Court to dismiss without prejudice was in effect to deny me any right to be heard and to violates my rights under the seventh amendment. PERNELL v. SOUTHALL REALITY (1973) 94 S.Ct. 1723,1727, CURTIS v. LOETHER (1974) 415 U.S. 189,194-196, DAIRY QUEEN v. WOOD (1962) 82 S.Ct. 894,896,897, BEACON THEATRES v. WESTOVER (1959) 79 S.Ct.

948,953-955, in addition to my due process rights under the fifth, also ninth amendment rights, and Art. IV, sec.2, par.1. (55a-58a), plus my first amendment rights to a redress of grievances.

Co-plaintiffs should not be penalized because a military person's military duty prevents his going to trial, when to deny them a stay would cause injury to the interests of the military person: PATRIKES v J.C.H. SERVICE STATIONS INC. 180 Misc 917,923 (1943 Sup.Ct. N.Y.) app den 266 App Div 924. Nor should any party be denied their day in court: SEMLER v OERTWIG (1943 Sup.Ct Ia.) 12 NW2d 265 at 275 [10-12].

5. The Soldiers' and Sailors' Civil Relief Act itself treats plaintiffs and defendants in different ways. A careful examination of the Act will reveal that this is true. (69a-79a). i.e. 50 USCS Appx sec. 520 (74a-75a) provides for

different protection for military defendants than plaintiffs. Where a military plaintiff has been injured and is looking to the Court for injunctive and other relief there would naturally be different considerations than when the serviceman was accused of causing grief and injury to others. We would suggest the following are some of the important factors this Court may wish to address:

Distance from the Court; Co-plaintiffs rights; Availability of appropriate counsel; Local impediments to obtaining unbiased counsel; Current status of section 521 (Military lawyers view); Efforts required of plaintiff to obtain military dispensation; Conditional stay.

The distance from the Court's jurisdiction seems a very important consideration by itself. Absence when ones rights are being decided or the lack of opportunity to properly prepare for

trial is in itself prejudicial: HECK v. ANDERSON (1944 Sup.Ct. Ia) 12 NW2d 849 at 851 [2,3] first para. The Iowa Supreme Court indicates at 852,853 [6-8] that a stay could be granted to others, "...so far as, necessary to protect the interests of the service..." person, also PATRIKES v J.C.H. SERVICE STATIONS INC. 180 Misc 917 at 922-924, (1943 Sup.Ct. N.Y.) app den 266 App Div 924, and; SEMLER v OERTWIG (1943 Sup.Ct Ia.) 12 NW2d 265 at 275 [10-12]. Certainly if co-defendants are proper candidates for a stay when the interests of the service person are affected than certainly when co-plaintiffs are wife or other of the serviceman's financially dependant family members, the actin should be stayed as to all parties in the action. 50 USC Appx sec. 513 mentions dependents, sec. 510 (70a-73a) Acts purpose, Fed.R.Civ.P. Rule 19 (80a-81a) joiner of persons needed.

We need to be together on this action.

Jim thought he had an attorney who would represent him in this case in September 1985, but as you can see from Attorney Lynch's letter (41a-47a) it was much too threatening to his practice to challenge the local system. Mr. Lynch helped us on other matters: Jim in 1985; and than me in 1986, but could not bring himself to do anything about what even he saw as the real problem-the problem of inequality in the Dallas County system. Jim really never had a chance to try and find another attorney in the area and my efforts to find other attorneys found the same problems Mr. Lynch had. Jim discussed this problem in more detail in his letter requesting a stay filed May 26, 1989 with this Court. Plenty of lawyers thought the system needed changing-but thought someone else should do it, mentioning conflict of interest.

Some thought their practice would be destroyed. I have heard of endless people hurt by the system as it is. I think the only hope for change can come from a suit such as ours.

The availability of unbiased Counsel who's first concern is for the client and the ability to freely consult with such counsel, person to person, is very important. Any restricting rules becomes even more important when one is in military service half a continent away. When Fed.R.Civ.P. local rule 1.F. restricts representation to the "Division thereof" (39a-41a), this presents real problems: obtaining representation that is unbiased, the attorney is after all a part of that same small legal community, and his livelihood depends on their good will; attorneys see a conflict of interest in representing someone in a suit that addresses problems that are

common to the other rural counties in this very limited area; Some of the problems I am addressing are similar to what Mr. Lynch mentioned in his letter.

Local rule 1.F. seems to effectively impede any action that would challenge the local system abuses in this rural area and impedes our ability to resolve any of our problems. Not being lawyers we find it hard to understand the purpose of this Rule 1.F. It seems any good decent lawyer from anywhere could handle the matter. I have even wondered if this did not constitute a restraint of trade? We hope this court would look at this rule and see if it needs modification, at least where military, outsiders, etc. are concerned in this type of case.

It seems that there should be provisions in the rules to eliminate this type of conflict of interest especially for absent military persons and their

family members who are domiciled in another state, and now stationed far from the Court's jurisdiction and the area where they were injured. He should have the ability to have an attorney more of his choosing without having to have an attorney from the "division thereof" rubber stamp the action. An unbiased legal system and counsel seems the very heart and soul of our judicial system.

To refuse a Stay for many of the cases where defendants are represented seems reasonable. Especially since Courts will frequently use section 520 (3) to appoint an attorney. But to use the same yard stick for the injured military plaintiff seems not to be within the meaning of 50 USC section 521 or the spirit of the Act.

In CONTINENTAL ILLINOIS NAT. BANK & TRUST CO. v UNIVERSITY OF NOTRE DAME (1946 Sup.Ct. ILL) 69 NE2d 301 at 304-305 [3] the ILL. Supreme Court upholds the

serviceman's right to not only be present at trial but to be able to participate in the presentation of his case, even if he has counsel. However in most cases the servicemember has been denied a stay when he has an attorney. Almost always BOONE v LIGHTNER (1943) 319 U.S. 561, 571-575 is cited in these cases.

Military lawyers have published many articles that indicate that a combination of rulings by the lower courts has served to almost totally eliminate protection that congress wanted to provide for the military under 50 USCS Appx section 521. They suggest that what ever you do, if you need a stay under 521 do not hire a lawyer! Have anyone else ask for the stay: your wife; your mother; someone in the military chain of command; anyone but a lawyer. The most recent article I have seen on this was in "The Army Lawyer" Feb. 1989. I am certain this Court did

not intend to nullify the Act in regards to sec. 521, nor send the current message that: if you need a stay one best not have an attorney for representation.

When congress drafted the words in 50 USC Appx sec. 521: "...on application to it by such person or some person on his behalf..." I do not believe that congress meant for plaintiffs to have to file their own cases to utilize sec. 521 or to enlist the help of their mothers, wives, fellow military members, or anyone else not trained in the law to obtain a stay. We do not believe we can proceed against the other plaintiffs alone. That is one of the several reasons why a stay was requested in the first place and the request to amend our suit later was made. This issue is very important not only to us but others that come after us. We need to know if we can acquire a lawyer and what effect that has on obtaining or

retaining a stay under sec. 521 (75a).

Not being lawyers we also asked for the right to amend the action when it was reopened as we hoped to be represented than: THOMPSON v REEDMAN (1961) 201 F.Supp 837,838 [4] states in part, "Leave to amend 'shall be freely given when justice so requires.' FED.R. CIV.P. rule 15(a), 28 U.S.C.A. The Courts have shown much liberality in allowing amendments. TARIR ERK v. GLENN L. MARTIN Co. 116 F.2d 864 (4th Cir. 1941)." at 871.

No plaintiff who has been injured should have to SACRIFICE THEIR LIVELIHOOD TO OBTAIN JUSTICE. As discussed earlier husband tried to get a deferment to remain in Missouri and other dispensation from the military to keep him stationed as close as possible so as to do what he could to resolve our problems (supra 22-23). He was so desperate for help and so concerned about leaving me behind in such

a hostile situation he almost ended his career in the process. We can only be grateful that the Air Force did not grant Jim his request to leave the Air Force. We have needed the income to fight this legal battle.

The Air Force expects their service people to go where they want them to go when they want them to go, to put the Air Force and the defense of their country first. I am concerned that many Judges may not understand what military life is like. They may have never served, or if so as legal officers, or pilots entitled to certain protections such as crew rest. Such duty may be quite different from other servicemen. Normally one has little control over when and where you are sent. Life is uncertain because our national defense needs can change rapidly. For a plaintiff to have to consider abandoning a career which the

U.S. government may have spent many thousands-in some cases millions training the individual for, seems unreasonable, especially in the case of a plaintiff.

I have selected parts of Jim's letter dated May 5, 1988 that you may wish to read to more fully understand what was said to the District Court on this matter (17a-25a). These parts particularly address some of the problems he faced in regards to his career and duty. This is the letter the Court required him to write and is referred to in the District Court orders (6a-13a). My husband did every thing he could. For military plaintiffs to have to be so concerned about civilian legal problems is not in the interest of either the serviceman or the country he serves.

I can understand that career military plaintiffs present a different problem to the courts with regards to sections 521

and 525 than those who enlist for a short time. However, nearly all officers are on indefinite assignments. The exceptions being primarily those with short term commitments made because of Government provided schooling. Many N.C.O. even though they have a discharge date are none the less career persons. With sec. 525 the same time passes. I do not see anything in the Act or sec. 521 that would preclude the court from granting a stay with conditions. Section 524 (77a-78a) provides for the stay to be SUBJECT TO SUCH TERMS AS MAY BE JUST.

It seems reasonable that the court could include language that would subject the stay to re-examination if it could be shown the plaintiff had been reassigned to the jurisdiction of the court and had been there for more than 90 continuous days and had not sought to proceed with the action himself, as most plaintiffs

would want to do. This would seem to protect all parties.

I don't know if a stay could include any language that would allow any discovery to preserve evidence without violating the stay itself, but if that could be done it seems that it should be something the military plaintiff should be able to initiate when duty would permit, if he had an attorney to help him and if a time convenient for the defendants could also be found. I can see where in many cases a military plaintiff may not be able to proceed with the action, but may be able to initiate some limited discovery and that might be desirable for all if it was possible under the stay.

6. This question addresses the application of abstention to this case. The 3rd Cir.Ct. sets out 3 criteria for applying this doctrine in:

DECK HOUSE v NEW JERSEY ST. BD. OF ARCHITECTS (1982) 531 F.Supp. 633 at 642 "...(i) the state proceedings reflect strong and compelling state interests; (ii) the state proceedings are adequate to vindicate federal claims, and (iii) federal intervention would be substantial and disruptive...."

In our case the state proceedings do not even address the problems in this case, Lynch (41a-47a). In this Federal case we are trying to get equal protection and other federal interests addressed and they are no part of the state action. The state proceedings will not address the federal claims and our other rights including those under the 14th amendment.

ZWICKLER v KOOTA (1967) 88 S.Ct 391 at 395 [4] this Court held that the federal judiciary is to give due respect to a suitor's choice of a federal forum and:

KUSPER v. PONTIKES (1973) 94 S.Ct. 303 at 306 [2,3] "...abstention would amount to shirking the solemn responsibility of the federal courts to 'guard, enforce, and protect every

right granted or secured by the constitution of the United States..."

We believe injunctive relief and a Stay under 50 USC Appx section 501 et seq. should have been granted and Federal jurisdiction should have been retained by the Federal District:

"... Once the state proceedings are terminated, any further action in federal court would interfere with important state interests no more than does any other suit brought under section 1983." WILLIAMS v RED BANK BD. OF ED. (3rd. Cir. 1981) 662 F.2d 1008,1024. and;

Art. III, sec. 2, par. 1 (55a)

Without some sort of injunctive relief, and/or a ruling from this Court on question seven, we will suffer irreparable injury. We have already been deprived of our rights and suffered great loss over a number of years because of this unequal treatment and should not have to suffer further.

7. This question goes to the default of Dallas County and whether this Court or

any court or clerk can address the default and such issues that may be part of the relief prayed for when a request for a stay is acted upon under 50 USC Appx. sec. 501 et seq. In the interest of brevity and because of the need to know if this Court will consider the constitutional questions and injunction prayed for, as it relates to Dallas County, we will keep the commentary short. The injunction requested contains within it subsidiary questions of constitutional law (36a-39a).

First, I wish to present why I believe good service was had and why I believe we are intitled to a default judgement. The law was complied with: Fed.R.Civ.P. Rule 4 (80a); Missouri laws 506.140, 506.150 (83a-84a) as applicable when the complaint was filed (33a-39a). Summons were served twice and this Court has copies on file (Filed: May 26, 1989).

The prosecutor, who answered for himself, had a duty to answer for both Dallas County and the State of Missouri or find someone else to do it for him Mo. law 56.060 (84a-85a). He could have had the court appoint someone if he felt it was not proper for him to make the selection of a substitute attorney Mo. law 56.110 (87a). The exceptions to this duty is covered by Mo. Law 56.070 (86a). When a county counselor should be appointed to handle the exceptions is covered by Mo. Law 56.631 (88a). Dallas County is not a first or second class county so there were no exceptions. It was Mr. Wayne K. Rieschel's duty to act.

Fed.R.Civ. P. Rule 55 (81a-82a) provides for a default judgement against Dallas County. Any neglect of a duty by county officials does not affect the validity of the service or judgment we are entitled to: KNOX COUNTY v HARSHMAN

(1890) 10 S.Ct.257 at 258. When Mr. Cox and Mr. Rieschel answered for themselves they can hardly say that they did not have any knowledge or notice thereof or that county officials were uninformed. This Court held under such circumstances the county has no right to question such actions that may result from their default and that plaintiffs do not need to go through the normal procedure of proving their case to obtain the judgment or other relief desired:

> UNITED STATES v COUNTY COURT (1887) 7 S.Ct 1171 at 1175. "...The averment to that effect in the petition in the action, if material and traversable, was confessed by the default .... If the defendant had denied it by a proper pleading, the fact would have been put in issue, and the plaintiff would have been bound to prove it...."

However, I do believe we are obligated to present more that has been presented thus far.

Missouri law 56.360 (87a-88a) allows the private practice of prosecutors in

places like Dallas County. Mo. Law 56.065 (85a-86a) prohibits private practice in certain first and second class counties. Private practice is allowed in Dallas County under 56.360 and as a result of this we have been deprived of the peaceful enjoyment of our home and personal property just as surely as Mrs. Freenstra was in KIRCHBERG v FEENSTRA 450 US 455 at 460,461 This Court held that to have to "... made a 'declaration by authentic act'..." to protect her interests did not redeem the basic inequality and "...the 'absence of an insurmountable barrier' will not redeem an otherwise unconstitutionally discriminatory law..."

There is no overwhelming state interest in continuing with this provision, such as there was when the state was new, when travel by horse and buggy could take a day for twelve miles and there were no

phones. If our state of Alaska can manage with a approximately twelve district prosecutor system, Missouri, much smaller and with more and better means of communication can manage also with district prosecutors that are not allowed private practice. There are endless numbers of people ready and willing to do the job if the changes are made in Mo. law 56.010 (84a). This provision now helps to assure that a local fellow will be prosecutor and tends to perpetuate the local problems as far as those coming into the county with different ideas, skin color, etc.

To allow this unholy marriage of a private persons interests with the power of the state by allowing a private person to hire a county prosecutor has enabled the private person to influence, if not command, the degree of law enforcement protection and other services provided to

us. Certainly everything that has happened here, criminal acts included, appear to have been done with the full support and permission of the Dallas co. authorities.

Both private practice and the current selection to office method used in a area such as Dallas County puts those on the state pay role in the position of having their livelihood depend on their decisions. They do not need to simply perform their job, and dispense justice, but they must consider if they will loss their jobs if they do not bend to the prejudices and whims of both their private clients and their friends, relatives, aunts, uncles, cousins: the local electorate, who put and keep them in public office.

Private practice by prosecutors allows someone who makes judge like decisions about who is to be prosecuted, when law

enforcement is to act, who is allowed to do as they please, to have "substantial pecuniary interests" and adjudicate disputes from an unlevel playing field. GIBSON v BERRYHILL, (1973) 93 S.Ct 1689 at 1699 [7]. Even the slightest pecuniary interest of any officer, judicial or quasi judicial invalidates his decisions TUMEY v STATE OF OHIO (1927) 47 S.CT. 437 at 441.

A personal, substantial pecuniary interest by a decision maker violates the 14th amendment and due process. Statutory provisions to over come such an inequality are not sufficient under principles laid down by this Court in WARD v VILLAGE OF MONROEVILLE, OHIO (1972) 93 S.Ct. 80 at 82-84 [1] [2,3] [4] Ability to ask for a special prosecutor does not overcome the basic inequality.

The incentive needs to be directed to justice and support of the U.S.

Constitution rather than to the above pecuniary incentive. The 14th amendment and Art VI par.2 & 3 (56a-58a) creates a further obligation on local government, below the federal level, to be certain the laws are ones that achieve those ends to the greatest possible degree at the current point in history, understanding of undesirable consequences, current technology, and still achieve an orderly society. There is also a county duty to run the schools and to train officials to better understand their constitutional duties and individual rights in an effort to combat local prejudices that clearly lead to 14th amendment (58a) violations.

There is a special obligation when: groups known to have such violation of equality as their main goals and claim to want to pass(ed) laws to accomplish their objectives (48a-49a); when such groups are known to be active in the area (47a-

48a); when they claim to have infiltrated the system itself (50a-53a); and official action tends to lend support to such groups (49a -50a, 52a, 54a).

We as a nation can do better in the Dallas Counties of America.

KUSPER v PONTIKES (1973) 94 S.Ct. 303 at 307 [5]. If freedom to associate is a protected right under the constitution than certainly we should be able to have and enjoy our Indian grandchildren and friends regardless of their skin color at our property in Dallas County and we should all be able to enjoy the property with the expectations of fair and equal treatment from Dallas County, Art. IV, sec.2, par.1 (56a), 14th amendment (58a).

Without the relief asked in regards to the county in the complaint we will suffer further irreparable injury. We have already been deprived of the peaceful use of our farm, our home and

personal property all these years since 1984; put to great expense to only be able to protect our interests in a very limited way; required medical treatment for the resulting physical problems; denied protection from criminal acts or even investigation into the acts; and suffered a break in this spring reported to the court and attorneys for the sheriff and prosecutor, but no return communication was received on the matter, plus much, much more.

The system in Missouri cities may be very good. But the playing field will not be level in places like Dallas County until another method of selecting prosecutors and local Judges is devised rather than Mo. Law 56.010 and Mo. Const. Art. 5 sec. 16. "...associate circuit judges shall be elected in the county in which they are to serve." (adopted Aug. 3,1976) and private practice is ended

(supra 43-47).

States that build up sites to honor those who divided this nation: confederate monuments and museums with tax payers money rather than civil war historical sites certainly help to foster racist beliefs within their borders (54a). We find what is going on in Dallas county and Missouri to be outrageous and shocking, yet the facts are there (47a-54a). The facts, as I see them, places those responsible as coming very close to giving aid and comfort to the enemies of democracy in violation of: Art. III, sec.3, par 1; Art. I, sec.10, par.1 (55a) and in neglecting to uphold Art.VI, par.3 (55a-56a), our whole Constitution all amendments, including the Bill of Rights and the 14th amendment. The oath required in Art. VI, par. 2 & 3 (56a) should also bind them to positive action in training subordinates

and teaching school children about equality and respect for others rights, etc.

It seems self evident that a judicial system as described in the statement beginning this petition, such as Dallas County has, violates the 14th amendment and the laws passed under it (56a-70a). It is wise that Judges and prosecutors are immune from being sued in their official capacity, they need as much independence as justice will allow. However, the reasons behind such immunity are compromised when prosecutors and Judges are chosen by a vote in a place like Dallas County. The local citizens can and will turn them out of office if they do not do their will to a very large degree. Their independence is only an illusion and in such places and an impartial decisionmaker and a fair decision process does not exist. The conflict of interest is too great to be

overcome. Where does that leave the outsider with different views, beliefs, skin color, etc? Add to that the private practice and someone like us faces an insurmountable wall of inequality.

The right to vote for representation and those that pass our laws is nearly sacred in a democracy and guarenteed under our form of government, but our founding fathers made no such provision for the selection of those chosen to interpret our laws, in fact on the federal level it is quite to the contrary. Prosecutors have to be considered with Judges because of the nature of their duty. They must make judgments about the law when they decide whether or not to prosecute.

The Mo. rural system may have made good sense a century ago and was perhaps the best that could be done than, but today we as a nation can do better. Only this

Court can mandate such a consideration of this matter of such magnitude. It is in the interest of the legal system, judges, lawyers, prosecutors, the general public and all those of good will with a sense of justice and fair play that you do so consider this matter. Not to allow replacement with another unequal system, but to mandate safe guards built in to give confidence to the stranger or minority that justice will truly prevail and if they believe it does not, a well known place to go to lodge complaints that will be taken into consideration upon selection or reselection of those for office or advancement.

Unless "all persons" as the amendment reads, are able to count on the whole government: State, Federal, and the Courts to treat them all equally under the law we will again soon have "A Nation Divided" part protected by the law and

part not protected. The hostility that will grow from that will undo all the progress America has made. It will be a Nation different than we want for either our Indian or white grandchildren or for our friends of many colors.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT Marker v Rieschel, et al. No. 88-1905 ORDER Filed: April 7, 1989

"A petition for rehearing and rehearing en banc was denied March 8, 1989, and the mandate of this court issued March 17, 1989. Since that time appellants have filed a motion for stay on March 21, 1989. As the mandate has issued, this court has no further jurisdiction in this case. Appellants are notified that further filings may result in imposition of sanctions."

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT Marker v Rieschel, et al. No. 88-1905 OPINION Filed: Jan. 9, 1989:

"James and Beverly Marker appeal pro se from the district court (1) order dis-

(1) The Honorable Russell G. Clark, United States District Judge for the Western District of Missouri.

missing their complaint without prejudice. We affirm.

The Markers filed this diversity suit on November 27, 1987, alleging various constitutional violations arising out of a boundary-line dispute with their neighbors, Earnie and Mae Burtin. Named as defendants in their complaint were Wayne Rieschel (the county prosecuting attorney), Jerry Cox (the county sheriff), and the Burtins. Included in the complaint was a request for a stay pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. section 521, until the year 1995, when James Marker completes his military service, and a request for an injunction of a pending state court action involving the same property dispute.

On February 9, 1988, the district court granted the Markers a temporary stay until May 13, 1988, and directed them to

advise the court of any facts which materially affected their ability to prosecute their case. The Markers responded that James Marker's military service interfered with his effective prosecution of the case, and requested the court to stay the cause of action until 1995.

The district court dismissed the Markers's complaint without prejudice, finding there were no facts to support a stay. In reaching this result, the court noted that the underlying property boundary dispute was pending in state court, and that the issue was not complex nor would it take an extended period of time to resolve. In addition, the court noted that the Missouri statute of limitations governing the Markers' cause of action tolled during James Marker's military service, and that it was not in the interests of the defendants, the

Markers, or of the court to have the case pending until 1995. This appeal followed.

Title 50 U.S.C. section 521 provides that the court in which an action is pending has the discretion to stay the proceedings if the ability of the plaintiff to prosecute the action is 'materially affected by reason of his military service.' The stay provision is not mandatory and the court has the ultimate discretion in determining, from all the circumstances of the case, whether a stay is warranted. Boone v. Lightner, 319 U.S. 561, 564-65 (1943); Tabor v. Miller, 389 F.2d 645, 647 (3d Cir.), cert. denied, 391 U.S. 915 (1968). The stay provision applies only to persons in military service. Growder v. Capital Greyhound Lines, 169 F.2d 674, 675 (D.C. Cir. 1948).

Title 50 U.S.C. section 535 mandates that the statute of limitations governing

a suit in which a serviceman is a party be tolled during that person's military service. Bickford v. United States, 656 F.2d 636, 640 (Ct. Cl. 1981). Spouses of servicemen are not entitled to the benefits of the tolling provision of this section. Lester v. United States, 487 F. Supp. 1033, 1039 (N.D.Tex. 1980).

We find no abuse of discretion in the district court's refusal to stay the Markers' cause of action until 1995, particularly considering that the applicable Missouri statute of limitations is tolled during James Marker's military service. Although the Markers correctly note that Mrs. Marker does not receive the benefits of the tolling section, she also is not entitled to a stay.

Furthermore, as noted by the district court, there is currently a quiet-title action pending in state court which

addresses the underlying property dispute in this case. Principles of abstention are particularly appropriate when state's property rights are involved, Luecke v. Mercantile Bank of Jonesboro, 720 F.2d 15, 16-17 (8th Cir. 1983), and as a state action is pending, the state law questions can be resolved without lengthy delay. Edwards v. Arkansas Power & Light Co., 683 F.2d 1149, 1157 (8th Cir. 1982).

We have considered the Markers' remaining points of error and find them to be without merit.

Accordingly, we affirm."

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

Marker v Rieschel, et al. No.87-3650-CV-S-4 ORDER Filed May 20, 1988

"On February 9, 1988, the Court entered an order staying any action in the above-captioned case through May 13, 1988

on the basis that one of the plaintiffs James A. Marker, Jr. was in the military service. The Court directed Major Marker to file a report in writing advising this Court of any facts existing at that time which would materially affect his ability to prosecute his action on or before May 6, 1988. Under date of May 5, 1988, the Clerk received a nine and one-half page single spaced typewritten report from Major Marker. In conclusion he indicated that he felt that his military service would prevent him from prosecuting this action until his release from same and requested a stay until December 31, 1995. Major Marker did not indicate any efforts which he had made to obtain a leave or other dispensation from the military authorities which would give him an opportunity to prosecute this action.

The Court is aware that there is a quiet title action pending between Major

Marker's wife Beverly Jean Marker and Earnie and May Burtin. In short, the underlying dispute in this case is over a property boundary line and the state court action seeks to resolve that issue. Disposition of this issue is neither complex nor would it take an extended period of time in which to try the issues involved and dispose of that case.

The Court will accept the facts as set forth in Major Marker's letter dated April 29, 1988 and filed in this case on May 5, 1988 relative to the interference of his military service in effectively prosecuting this case. However, as pointed out in the Court's Order of February 9, 1988 the Missouri statute of limitations is tolled pending Major Marker's military service. It certainly is not in the interests of the defendants in this case to have it pending beyond the date of December 31, 1995 nor is it

in the interest of the business of this Court. This Court seriously doubts that it is in the plaintiffs' interest to postpone the disposition of this case until sometime after December 31, 1995.

It is the opinion of this Court that it would be in the interests of justice and in the best interests of all parties concerned for the case to be dismissed without prejudice to a refiling by plaintiffs. Therefore, it is

ORDERED that the Clerk is directed to enter a judgement of dismissal without prejudice."

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

Marker v. Rieschel, et al.

No. 87-3650-CV-S-4

JUDGEMENT IN A CIVIL CASE: May 20, 1988

"Decision by Court. This action came to a determination before the Court. The

issues have been determined and a decision has been rendered.

It is ordered and adjudged That this case be dismissed without prejudice."

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION Marker v Rieschel, et al. No.87-3650-CV-S-4 ORDER Filed: February 9, 1988

"A motion for a stay of the proceeding in this case has been filed by Beverly Jean Marker on behalf of James A. Marker, Jr. who is presently in the military service located at Homestead Air Force Base at Homestead, Florida. She alleges that because of the military service of her husband, his ability to prosecute this lawsuit is materially affected. Under 50 U.S.C. section 521, it is provided that upon the application of a party in the military service or on application by someone on his behalf, any

legal proceedings shall be stayed unless in the opinion of the Court, the Court determines that the service person's military service does not materially affect the person's ability to prosecute or defend the action. Based upon the allegations set forth in the motions of Beverly Marker and facts set forth in the letter of Robert K. Ask, James A Marker's commanding officer, this Court is unable to say that the ability of James A. Marker, Jr. to prosecute this action may not materially be affected by reason of his military service.

It would appear that a stay is being sought through July 31, 1995 or at such other time as plaintiff James A. Marker, Jr. determines that his military service does not materially affect his ability to prosecute the action.

This Court has an obligation to see that cases on its docket are processed in

a speedy and effective manner. To stay the case until July, 1995 appears to this Court to be to the great prejudice of plaintiffs in that by that time, evidence may be lost and witnesses misplaced. In addition the defendants have a right to an early determination of their liability if any to the plaintiffs in this case.

50 U.S.C. section 525 tolls the statute of limitations while the plaintiff James A. Marker Jr. is in military service so even on a dismissal of plaintiffs' complaint, a later filing promptly after Major Marker's discharge from service would not be barred by the Missouri statute of limitations. It appears to the Court that it would be in the interests of justice to promptly process this case to a conclusion; however, in view of the motion for stay, the Court is of the opinion that it must stay the action temporarily. The Court will grant

the motion for stay through May 13, 1988. Plaintiff James A. Marker, Jr. will be directed to inform the Court in writing on or before May 6, 1988 as to the facts existing at that time which support his position that by reason of his military service, his ability to prosecute this action is materially affected. Any stay beyond May 13, 1988 will result in the Court either entering an order statistically closing this file or dismissing it without prejudice. Therefore, it is

ORDERED that plaintiffs' motion for stay is granted through May 13, 1988; and it is further

ORDERED that on or before May 6, 1988, plaintiff James A. Marker, Jr. shall report in writing to this Court any facts existing at that time which would materially affect his ability to prosecute this action."

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION Marker v Rieschel, et al. No.87-3650-CV-S-4 LETTER REFERRED TO IN ABOVE ORDER of February 9, 1988 From: ROBERT K. ASH, JR., COLONEL, USAF DEPUTY COMMANDER letter dated Dec 29, 1987 [Note on page 7 above the name is misspelled in the order as: Ask.]

"The purpose of this letter is to provide current information on the military service status of Major James Marker. Be advised that I am currently serving as the Deputy Commander, 31st Combat Support Group, Homestead Air Force Base, Florida, and have been continously assigned here since July 1985; first as Director of Personnel, and now as the Deputy Commander. In these capacities, I have been closely associated with Major Marker and maintained control over his service record.

Major Marker is on extended active duty with the U.S. Air Force. He is presently the Commander of the 31st Security Police Squadron and has been continuously since May 1985. In this capacity, his duties require his virtually constant presence to include his frequent, immediate availability during nonduty hours. Please note that shortly after his arrival from Whiteman Air Force Base, Missouri, our mission changed from a training wing to an operational Tactical Fighter Wing. This change significantly altered our security requirements and proportionally compounded the complexity and demands embraced in the key command position he fills. During the past year and a half, he faced a demanding schedule of multiple, important wing exercises and inspections that precluded predictable or lengthly leaves away from his duties. As the 31st Tactical Fighter Wing continues

its preparation toward full operational capacity, we face another series of crucial inspections and other major wing responsibilities which require Major Marker's personal presence here at Homestead Air Force Base. As a result, he has been and will be unable to make regular or extended visits to Missouri to pursue the interests addressed in the case filed in U.S. District Court in Springfield, Missouri, on 27 Nov 87, # 87-3650-CV-S-4.

I have been briefed on the nature and complexity of this case and believe the requirements for a STAY as provided for in the Soldiers and Sailors Civil Relief Act, 50 USCA App 521, are met and are both appropriate and fully supportable. The situation described in paragraph 33 of the case is accurate to the best of my knowledge to include the likelihood of a near-term reassignment from Homestead Air Force Base."

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION Marker v Rieschel, et al. No.87-3650-CV-S-4 LETTER OF MAJOR JAMES A. MARKER, JR. FILED WITH THE DISTRICT COURT May 5, 1988, letter reads in part:

"1. The purpose of this letter is: to provide the information concerning facts which would materially affect my ability to prosecute this action....

3. Prior to my arrival here at Homestead Air Force Base (HAFB). the mission of the base was to train pilots and to host the United States Air Force Conference Center for top civilian and military leaders from both our nation and other nations. Additionally, the 31st Tactical Training Wing maintained a Professional Military Education (PME) school and other activities for members from HAFB and other Air Force bases. Since my arrival, the mission of HAFB has

changed from one of training to one of an operational tactical fighter wing. The base still hosts the United States Air Conference Center and PME school, while continuing with many other activities.

4. The full impact on activities that changing the mission of a base has on people's working hours, especially Commanders like myself, is difficult to convey to someone like yourself not involved in such a transition....Colonel Ash, in his letter, gives you some idea of what is involved with the transition to the 31st Tactical Fighter Wing, and his expectations for the near future for HAFB to fine tune our capabilities; we will be very busy, (spelled Colonel Ash not Colonel Ask).

5. Homestead Air Force Base (HAFB) is located south of Miami, Florida. In fact some of our base personal reside in Miami. To the best of my knowledge HAFB

is the most southern military base that the United States has located on the mainland of the United States of America (USA); we are the closest to Cuba and our other neighbors to the south involved in those issues in the news that are of such vital concern to our nation at this point in history.

6. My duties and responsibilities have been covered to some degree by previous communications from others, however it seems desirable to touch on this subject again, bearing in mind that there are some subjects I can not cover due to their sensitivity. As Chief of Police here at HAFB and as 31st Security Police Squadron Commander (31st SPS/CC), I wear "two hats" so to speak. I am responsible for law enforcement at HAFB, working in cooperation with the Metro Dade Police Department, FBI, and various other law enforcement agencies....close enough to

Miami that, unfortunately, criminal activity bleeds over into the HAFB community.

7. My squadron also provides the security for all the resources on base, including the fighter aircraft and the equipment that supports a fighting mission, as well as security for those individuals that use the Conference Center....the Air Force sent me to two anti-terrorim schools. My men have all been mobility trained in airbase ground defense...One must remember the Air Force has no infantry...From time to time, men from my squadron are deployed to other bases worldwide, wherever they are needed. But that is about all I can say on this issue.

8. My work days are long. I normally spend twelve hours or more in the office daily, plus time on the weekends, holidays, down days, and evenings.

I routinely receive telephone calls at night or communication by radio on law enforcement or security matters....

[my note: here is listed 1/2 to 3/4 page of additional duties and meetings he needed to keep on top of, this list would take up several full pages here.]

11. Since filing the complaint, I have been approached by Tactical Air Command Headquarters at Langley Air Force Base, Virginia, concerning overseas assignments. In January 1988, they asked me if I would take an assignment to Japan. Because I still did not have anything in writing about the Stay, and because of concern for the safety of my wife, I told them I would rather not take that assignment. Again this month, they approached me about an assignment to Ankara, Turkey, working directly for the general in charge there. I told them if I had to go I would have to go without my wife

because we were waiting to hear about a Stay in a Federal case. I was told the general might not want me without my wife there too. So far, I have not heard any more on that assignment, but could any day. Both of these assignments would have been good jobs and opportunities for advancement from what I have been told. However, I do not want to leave my wife stateside so far from home, going in and out of such a hostile situation alone, every few weeks, with no one here to return to. It is also difficult for her to resolve anything when there, since we do not even have the benefit of law enforcement protection.

12. From what I have been told, when I leave here it will be to an overseas assignment. Not only am I due for one, but the Air Force has tried to completely eliminate state-to-state moves because of budget constraints....if Headquarters

likes your work, when they know you are due for an overseas move they will try and offer you first what they consider some of thee more choice assignments. If one does not agree to accept one of these opportunities, than after a short while the service member will be given an assignment from Military Personal Center (MPC) in Texas in which there is little or no choice about where or when the assignment will be. To turn down all these earlier offers is not wise, in fact can be quite detrimental to ones future. The Air Force does not look favorably on those who turn down good opportunities. ...I know I am due to go overseas on a long tour. it would be best to be able to do it on more favorable terms....

13. The Air Force in its efforts to save money, is trying to induce those currently overseas to...(double) their overseas assignments ...been known to

change what has been voluntary to involuntary...may find myself overseas for a prolonged period of time....From what my wife has been able to research in case law it seems that one must ask for a Stay for a long enough period of time that one can reasonably hope to proceed with the case...Case law does not appear to support a second request.

14. When I was stationed in Missouri, and realized that we had some problems to solve, I did everything I knew to remain stationed there to do so. SAC wanted me to fill one of their Commander's positions, but when I tried to remain in Missouri and they found my wife could not accompany me, my first assignment was cancelled and I was sent instead to the Tactical Air Command (TAC)...I wanted to be able to resolve the problems at that time, however, my military duty materially affected my ability to even

protect my wife or my interests. WE received no cooperation from Dallas County authorities...It was with a heavy heart that I left my wife there in Missouri, knowing that the services I provide to others in the form of law enforcement were being denied to my wife and myself. Things certainly did not get any better after I left.

15. After the October 1985 incident it seemed the risk to my wifes safety out weighed any benefit, or property interest we had in her remaining there alone without protection. It was after this time she began going back and forth every few weeks. Our property insurance is only good if one of us is physically in the house every so many days. I did everything I could to get help from the local system, but was unsuccessful....I find it shocking when someone can use the power of the state to put another person

in the position of having to go in late at night, or backpack into their own property.

17. ...She felt like she had lived like a tormented hostage in her own house, with Dallas County legal system in the employee of her tormentor and being used against her rather than to protect her.

19. ...it is an important case for not just us but for all those others that come after us who might be so wronged.

21. ...The request for a mandatory injunction is for the most part only a simple request for Dallas County to be required to provide that law enforcement protection be provided on an equal basis that I believe we have a right to expect and that we have not received from Sheriff Cox's Office or from the Prosecutor's Office.

23. No one in Law Enforcement who must make a decision about arrest,

prosecution, or investigation of a crime should be allowed to enter into or maintain any possible conflicting personal income producing relationship ....I believe that there are very important issues to be decided in this case and that all the defendants acted under "COLOR OF LAW", so it is important for both our rights and public policy that this case be preserved....

24....I am a regular officer and therefore a day certain for the end of my military service is not known....

25. I must OBJECT to any...provision to dismiss this case without prejudice...because this would deny my wife a right to be heard....I believe that my wife's interests in this case and my own interests are so interwoven that it is essential that we proceed in one action...A dismissal without prejudice would not only greatly prejudice my case,

but would deny my wife's right to be heard with me...

26. I must OBJECT...Local FRCP 1...

27. I must OBJECT...geographic location.

28. I must OBJECT...default judgement ... Dallas County is in default....

29....I would like you to make note of the fact that Dallas County is in default.

31. I am especially concerned that in Missouri that rural county prosecutors can have private clients....can leave a citizen with no place to turn in respect to that law enforcement agency one depends upon and which has a monopoly on the types of actions it can legally take...I believe they have a duty to provide that protection without bias in an equal manner...

32. ...injunction in our complaint ...we were simply asking that the court

require Dallas County to provide its services in an equal and impartial basis to all alike and to make any reforms necessary to see that others do not suffer as we have....

32. As you have seen we asked for a mandatory injunction in our complaint. Perhaps this is not the correct title...we were simply asking that the court require Dallas County to provide its services in an equal and impartial basis to all alike and to make reforms necessary to see that others do not suffer as we have...

36. It seems amazing that what has happened to us could go on in America in 1988. It is hard to believe that my wife is still having to drive thousands of miles every few weeks...Do you realize she has been making these trips and backpacking in, or going in at night, for going on three years now?...No serviceman

should have such worry's while trying to defend his country....

37. We have both spent our lives around the military. We work, cooperate, and live in harmony and dignity with all sorts of persons from this 'melting pot, every race, color, and creed. Therefore our values are perhaps a little different than some others in Dallas County. We believe that everyone should be entitled to equality and dignity. We know that a wide variety of service people protect our liberties and way of life in America. We know that when they lay down their lives for our freedoms that all of our blood runs the same color of red. I am responsible within my squadron to see that every person is treated fairly and equally. I would hope that this case would bring the reality of justice, freedom, and equality to the backwoods of America. When one moves to such a place

and stays much to yourself it may take five years before your neighbors find out that you believe in 'freedom and justice for all.' We lived in Dallas County for five years in peace and harmony. We believe the cause of our problems goes beyond any property concerns....

38. ...because both the scoop and magnitude of my military duty requirements and my geographic location do both materially affect my ability to prosecute this action...it is extremely important that I receive the Stay ... under 50 U.S.C.A. App. sections 521 et seq...

39. As I have said above it is my desire to proceed with case just as soon as possible, and will request to do so just as soon as it seems we can do so ... I believe that if this case is dismissed even without prejudice that it will cause prejudice to many of my rights and cause me great damage e.g. any rights I may

have to a default judgement, my wife's right to be heard, my right to have her as a plaintiff with me on this case, and all other rights...In addition we would be left without the legal and law enforcement protection I believe I not only have as a birthright as a citizen of the United States of America, but have earned serving my country. I believe the intent of Congress in passing the Soldiers and Sailors' Civil Relief Act was to relieve service personal of concern for such matters so they could devote themselves to the full service of

their Country...."

DISTRICT COURT CIVIL DOCKET SHEET ENTRIES reads in part:

1987	NR.	
"Nov. 27	2	MOTION - ... (5 summons issued and handed to Mrs. Marker)"
"Dec. 22	6	RETURN OF SERVICE - ... Dallas County, Mo, by certified mail..."
"Jan. 26	13	RETURN OF SERVICE - ... Dallas County, Mo, by personally serving..."

[Note: copy of this whole sheet, both summons and return service were filed with this Court May 26, 1989 in Mr. Turners office: DOCUMENTS May 1989.]

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

Marker v Rieschel, et al. No.87-3650-CV-S-4 COMPLAINT Filed Nov 27, 1987

STATEMENT OF FACTS reads in part:

" 1. The Plaintiff...spouse...domiciled in the State of Alaska.

5. The Plaintiffs have been unable to use the military orders issued to Major Marker to move their household goods from Dallas County, nor vacate, nor rent, nor list, nor otherwise use as they would choose the Dallas County Property because of a lack of equal protection by the current Dallas County Officials, and concerns for the safety that exists for any occupant because of this lack of protection.

7. ...Defendants are residents ... of Missouri...

8. The amount in controversy ...exceeds ...($10,000.00), exclusive of costs and interest.

16. ...Deputy Thieson, in front of witness, left a complaint form with Plaintiff, Beverly J. Marker for Plaintiff, James A. Marker, Jr., to sign when he retuned to the house. Later that same day, Deputy Thieson informed the Plaintiff, Beverly J. Marker, that the Dallas County Sheriff, Jerry Cox, had instructed him that he could not accept the complaint because the Dallas County Prosecuting Attorney represented the Defendants, Earnie Burtin and Mae Burtin...

23. on other occasions...effective equal protection and help was either denied or ignored...

24. The Law Enforcement System Dallas County has for its rural residents and property owners consists of the Dallas

County Sheriff's Office, the Dallas County Prosecutor's Office and the Dallas County Court System.

26. During the Summer and Fall of 1985 the adult Son and Daughter of the Plaintiffs moved from Alaska, together with their families, and with financial help of the Plaintiffs, to the referred premises...it was considered by family and friends that the property had become unsafe to occupy by one person alone or to put renters in because ot the uncontrolled actions of the defendants...and the lack of law enforcement...

27. After the Plaintiffs adult children had been on the above referred to premises for a short period of time, they decided that without law enforcement protection...that it was unsafe for their families to remain under such lawless conditions...

31. ...The Plaintiffs believe that the

main root of their problems is this lack of protection by the county, which they believe the county has a duty to provide...."

(SUMMARY of some remaining important points: The above was followed by a request for a Stay in paragraph 33; and request to amend later in paragraph 34 explaining we were filing pro se and were not sure if the complaint was properly worded; paragraphs 36 through 49 covered SEVEN COUNTS, as best as we could word them, and asked for a sum certain, MONEY DAMAGES, for each of the seven counts. COUNT VIII of the complaint is for injunctive relief and reads as follows:)

"MANDATORY INJUNCTION

COMES NOW the Plaintiff and for Count VIII of their complaint states as follows:

50. Plaintiffs incorporates by reference in this Count Paragraphs 1 through 35 of the Statement of Facts contained herein.

51. Defendants, actions or failure to provide protection, as set forth herein are of such a continuing nature such as to deprive the Plaintiffs of an adequate

remedy at law.

WHEREFORE, the Plaintiffs, James Allen Marker, Jr. and Beverly Jean Marker, his wife, prays as follows:

1. That this Court enters its mandatory injunction requiring The County of Dallas, Missouri, to be required to provide the services of the offices of the Prosecutor and the Sheriff's Office, on which it has a monopoly, to the Plaintiffs on the same basis and with the same ease of access, as impartially, and with the same equal protection as provided any other person or tax payer within its jurisdiction; and

2. That this Court enters its mandatory injunction requiring The County of Dallas Missouri, to treat for purposes of upholding the law, or any other purpose, all persons in its jurisdiction, whether born in Missouri, stranger, military, or "outsider", or regardless of whom might

be, or might have been, their legal representative, in an equal manner, and to offer equal protection without any person being able to use the powers thereof the County or State to an unfair or onesided advantage; and

3. That this Court enters its mandatory injunction requiring the County of Dallas, Missouri, to examine itself or summit itself to inspection by an outside body appointed by this Court, to remove any of those in Law Enforcement, the Justice System, or other County Officials that have not fullfilled the duties of their offices, with held Equal Protection, or have used the power of their office to an unfair advantage to increase their personal gain, or that of their fellow county employees; and

4. That this Court enters its mandatory injunction requiring the County of Dallas Missouri, to make such reforms, update

such laws or practices, as is necessary to assure true and full equal protection and full civil rights to all those that come within its jurisdiction; and

5. That this Court order the Defendants, to pay the Plaintiffs reasonable attorney's fees, if the services of an attorney are used, or to pay reasonable expenses for the Plaintiffs in prosecuting this injunction, and in their efforts to secure their Rights and Justice; and

6. That this Court orders the Defendants to pay costs hereof; and

7. _For such other and further relief as is just and proper in the premises."

... "Demand for Jury Trial"

LOCAL COURT RULES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI Effective: January 1, 1983

Rule 1. F: "F. VISITING ATTORNEYS; PERMISSION TO APPEAR IN A PARTICULAR

CASE. Any attorney not a member of this Bar but who is a member in good standing of the Bar of any court of record, may be permitted to appear and participate in a particular case, civil or criminal, under the following conditions:

Where any visiting attorney undertakes to represent clients in this court, there shall be filed with the initial pleading a written statement, identifying each court of which the visiting attorney is a member of the Bar; and stating that neither said lawyer nor any member of a firm to which the attorney belongs appears on any list of attorneys disqualified to appear in that, or any other, court of record. The statement shall designate some member of the Bar of this Court having an office for transaction of law business in the District and Division thereof in which the visiting attorney seeks to appear,

upon whom service of all papers may be made. The member of this Bar so designated shall consent to said designation and endorse all pleadings thereafter filed in the cause.

Unless the statement, supra, is filed with the initial pleading, or within 15 days thereafter, the Court, upon motion, may dismiss any action commenced in violation of this Rule. Upon compliance with the foregoing and introduction of the visiting attorney to the Court the sponsoring attorney may be excused from further attendance and the visiting attorney will be permitted to appear for the purpose of the particular case, without enrollment." Local FRCP Rule 1.F.

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT Marker v Rieschel, et al. No. 88-1905 Filed: Feb. 28, 1989 ATTORNEY GARY W. LYNCH'S LETTER dated

February 23, 1989.

"I have had the occasion to represent Major and Mrs. Marker on matters at their request arising out of their ownership of their property in Dallas County, Missouri, since the early part of September, 1985, and particularly with regard to the above referenced litigation.

In the first petition filed by the Burtins it was claimed that they had an ownership interest in the land upon which the Marker's house is located. These allegations have been stricken by the Court and there are no allegations currently pending by the Burtins that they have any claim on the Marker's house.

Mrs. Marker has expressed to me on numerous occasions that she is afraid to stay at her and her husband's home without her husband being present. She related to me several instances when she was threatened by Mr. Burtin and the

Sheriff of Dallas County, although requested to assist, refused to investigate or for that matter even come out to the property to lend assistance. The Burtins have been represented in their civil action against Mrs. Marker by the Prosecuting Attorney of Dallas County, Missouri.

I have had an investigator with this office visit the premises and attempt to verify Mrs. Marker's allegations. He has obtained statements from third parties confirming Mrs. Marker's statements about the failure of the Dallas county Sheriff to respond to her requests for assistance. My investigator found no instance where a witness's statement contradicted what had been conveyed to me by either Major or Mrs. Marker.

Mrs. Marker has indicated to me that as a result of the threats made against her by Mr. Burtin and the threatening actions taken by Mr. Burtin against her, coupled

with the fact that the Sheriff has refused to respond to her requests for assistance, that she is afraid to stay on her own property without her husband. Major Marker is in the military and because of his assignments cannot stay on the Dallas County property. Therefore, Mrs. Marker has had no choice but to live away from Dallas County, except for periodic trips back to the property to maintain her residence. She has related to me that on these trips to the Dallas County property she has had to enter and leave the premises surreptitiously because of her fear and her lack of confidence that the law enforcement officials of Dallas County would provide her protection.

Because the state court action is strictly between the Burtins's and Mrs. Marker, the resolution of the pending litigation in state court would not offer Mrs. Marker any comfort or assurance that

she could rely upon the law enforcement officials of Dallas County to provide her protection under the law.

The absence of Mrs. Marker from the area and Major Marker's duty assignments in the military have contributed to the inability to conclude the above litigation. In fact, the progress of this litigation has been pending for some time on scheduling the deposition of Major Marker. Given the nature of his duty assignment we have been unable to schedule it at a time when he was available. Until Mrs. Marker can be present in the area for an extended period of time to prepare properly, this case may not be capable of resolution.

Although I am representing the Markers in their land controversy, I am not in a position to represent them in any action involving the law enforcement officials of Dallas County, Missouri. I have on

numerous occasions had to request of these individuals to lend assistance to several of my clients. It would not be fair to my other clients to jeopardize that relationship any further than what my current representation of the Marker's has already done. In addition, because I have had many occasions to deal with these individuals I have developed personal relationships that would make it personally very difficult to oppose them in a personal manner. I have explained this on several occasions to the Markers and urged that they seek the advice of counsel that is not personally involved. My comments should not be construed as an indication on my part as to any belief as to the propriety of the conduct of any of these individuals but rather as an explanation of my personal inability to assist the Marker's as it relates to the conduct of the law enforcement officials

of Dallas County, Missouri.

When Mrs. Marker mentioned to me that she felt that some of the actions that had occurred to her in Dallas County were the result of actions taken by the Klu Klux Klan (KKK), I told her that I had seen newspaper articles and ads in relation to the Klan and that I had heard rumors that they were indeed active in the Dallas County area. Mrs. Marker obtained a copy of a letter to the editor of a local newspaper written by Mr. Ted Dickover who professed to be a member of the local Klan. I recall discussing this and the activities of the Klan in the Dallas County area with various members of the community when it was published.

Yours truly.

DOUGLAS, LYNCH, MUNTON & HAUN, P.C.

BY Gary W. Lynch"

[Note: a copy of the above and also the following is on on file with this Court in Mr. Turners Office, filed May 26, 1989 see last part of DOCUMENTS May 1989]

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT Marker v Rieschel, et al. No. 88-1905 Filed Feb. 28, 1989

SWORN STATEMENT of EUGENE R. NOVAK, JRNIOR, LONG LANE, DALLAS CO. MISSOURI reads in most relevant part:

"I, Junior Novak, was raised in Dallas County, Missouri....how many people did I think ether belonged to the Klan OR shared their views....in my opinion it was probably about 95%...the Klan and racism is very active in the County. ...remain low key...manage to accomplish their goals... I believe that the problems Major and Mrs. Marker are having is because they hold beliefs different than most of the people that live in this area.... "

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT Marker v Rieschel, et al. No. 88-1905 Filed Feb. 28, 1989 article Dated 23 Feb. From Buffalo (Dallas Co.)

Mo. Newspaper by Mr. Ted Dickover reads in most relevant part:

"Dear Editor: ... Dallas County... Knights of the Klu Klux Klan ... We believe in white supremacy. We do not believe in Mob violence, but we do believe that laws should be enacted to prevent the cause of mob violence.... I am a Kleagle in this organization, which is the same as a recruiting officer, and males 18 years old or older who would like more information or desires to join this order may contact me at P.O. Box 529, Buffalo, Mo. 65622. For God and Country. Kleagle Ted Dickover"___

[Full copy of the above and also the following articles are on file with this Court in Mr. Turners Office, filed May 26, 1989, please see last part of DOCUMENTS May 1989]

"MADAME CHOUTEAU" by Roy Blunt [Missouri] Secretary of State, published in the Buffalo Missouri, County Courier 20 April 1989 page 10: "...Madame

Chouteau became an accomplished business-woman, Indian slave trader and property owner."

COMMENTARY, March 22, 1989 by Jim Hamilton, Editor and Publisher of the Buffalo Reflex: "...I would like to have seen Missouri's streams as the Osage knew them. But several million people have moved into the state since we ran the Indians out...."

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT Marker v Rieschel, et al. No. 88-1905 Filed Feb. 28, 1989, dated 23 Feb. From THE NEWS-LEADER the main newspaper in Springfield, Missouri Sunday, Feb. 14, 1988. Article by Rodney Bowers of Gannett News Service, reads in most relevant part:

"... Robert Edwards Miles, 63, reportedly the No. 2 man in the Aryan Nations group.... Miles, a former grand dragon of the Michigan Realm of the

United Klans of America...had called for 'a new order in which followers, through paramilitary and covert actions, would attain total social, total political and total theological power.' The highest officials of this new order, said Miles, should 'include ones already holding policy-making positions within the federal, state, county or other governmental levels,' including members of the armed forces and police officers...."

FURTHER INFORMATION ON "MILES" mentioned in above article from: page 50 of SPECIAL REPORT, "The Ku Klux Klan A History of Racism and Violence" Third Edition 1988, Published by Klanwatch, a project of THE SOUTHERN POVERTY LAW CENTER, 400 Washington Ave., Montgomery, Ala. 36104:

"Robert Miles, 62, is the former grand dragon of the United Klans of America's Michigan chapter.... heads the Mountain Church (also called Mountain Kirk) a white supremacist church ... in Cohoctah, Mich., and publishs "From The Mountain" a newsletter read by a wide range of white

supremacists. Miles conducts an extensive prison ministry and hosts national gatherings at his farm twice a year.

During the 1970s, Miles spent six years in federal prison... According to the FBI, Miles was a regional commander of the Order, and he allegedly directed many of the Order crimes. Miles was acquitted along with other top leaders of seditious conspiracy charges in 1988...." [in Federal Court in Fort Smith, Ark.] *

*FOOTNOTE: A full copy of the article: 2/14/88 page 50a, and a map that was with the article is on page 53a; additional relevant articles were filed with this Court May 26, 1989 in DOCUMENTS May 1989. i e.: the pictures on page 54a were taken at Higginsville, Mo on a 108 acre park where Mo. is building a Confederate Museum and adding adjacent acreage for a cemetery; there was also an article titled "KLAN CANDIDATES ANGERING SOME". The Klan article is about two white supremacists who ran for public office this spring in Northmoor, Mo. (population 506 last census). They were reported to be: Dennis Mahon, a national Ku Klux Klan organizer, and Joe Howard, a Klan sympathizer and former member of the National Association for the Advancement of White People. They sent out Klan literature to gain votes, upsetting some of those supporters of the opposing candidates. Northmoor is located near Kansas City. These (47a- 54a) are relevant to question 7, and show a little of what is going on in the Western Dist. of Mo.

U.S

on

By Rodney Bowers
Gannett News Service

FORT SMITH, Ark. — W
prosecutors have declared
the United States, federal j
tors contend, replacing
robes and cross burnings
tigues and assault rifles.

With the start of a major
trial Tuesday, the federal
ment is returning the fire.
the 14 defendants are charg
plotting to overthrow the
government. Other char
clude plotting to dump cy
water supplies and consp
assassinate a federal judge
FBI agent.

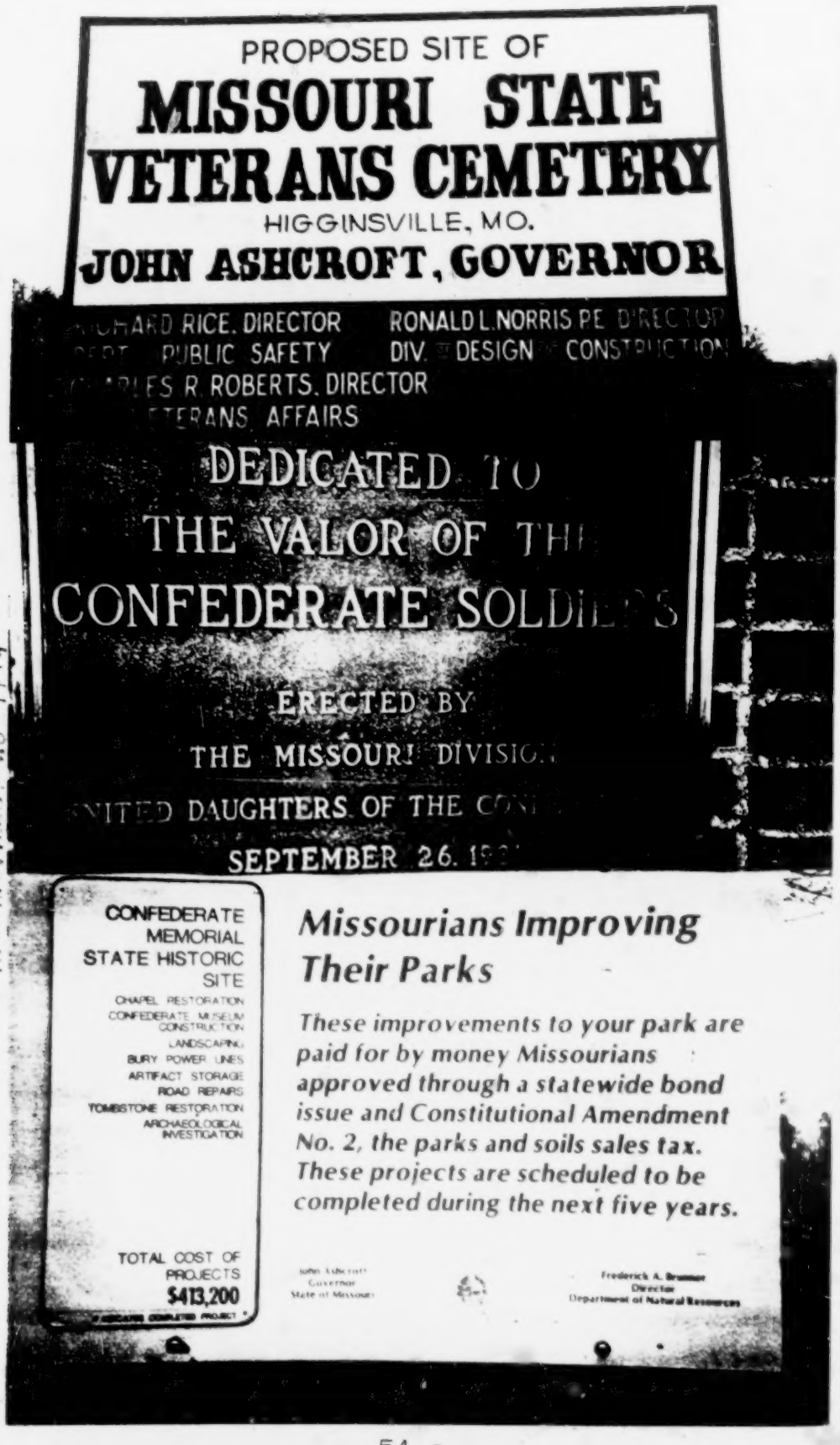
The charge of sedition
rarely prosecuted in peace
"They conspired to d
confidence in the governi
committing assassinations
eral officials and member
nic groups, by bombings
struction of utilities
polluting water supplies,"

Actions attributed to radical right-wing groups since 1983

The government says:

1. 200 white supremacists met July 7-10, 1983, during the Aryan Nations Congress at Hayden Lake, Idaho. The government alleges a group of men conspired at the meeting to overthrow the United States government and form an Aryan nation.
8. CSA leader James Dennis Ellison signs a document in December 1983 at the CSA camp in Marion County, Ark., proclaiming "War in '84."
9. Members of The Order robbed a bank Dec. 20, 1983, at Seattle.
10. CSA members allegedly left the CSA camp Dec. 26, 1983, to kill federal Judge H. Franklin Waters of Springdale, Ark., and FBI agent Jack D. Knox of Fayetteville, Ark. The attempt was aborted.

Filed with this Court 26 May 1989 and with the 8th Cir Ct on 28 Feb 1989 From The News Leader, Springfield, Mo Feb 14, 1988 page G-1
Please see footnote page 52a and article page 50a


PROPOSED SITE OF
MISSOURI STATE
VETERANS CEMETERY
HIGGINSVILLE, MO.
JOHN ASHCROFT, GOVERNOR
RONALD L. NORRIS P.E. DIRECTOR
DIV. DESIGN CONSTRUCTION
CHARLES R. ROBERTS, DIRECTOR
VETERANS AFFAIRS
DEDICATED TO
THE VALOR OF THE
CONFEDERATE SOLDIERS
ERECTED BY
THE MISSOURI DIVISION
SEPTEMBER 26.
CONFEDERATE
MEMORIAL
STATE HISTORIC
SITE
CHAPEL RESTORATION
CONFEDERATE MUSEUM
CONSTRUCTION
LANDSCAPING
BURY POWER LINES
ARTIFACT STORAGE
ROAD REPAIRS
TOMBSTONE RESTORATION
ARCHAEOLOGICAL
INVESTIGATION
TOTAL COST OF
PROJECTS
$413,200
Missourians Improving
Their Parks
These improvements to your park are paid for by money Missourians approved through a statewide bond issue and Constitutional Amendment No. 2, the parks and soils sales tax. These projects are scheduled to be completed during the next five years.
John Ashcroft
Governor
State of Missouri
Frederick A. Bruenner
Director
Department of Natural Resources

CONSTITUTION OF THE UNITED STATES

OF AMERICA (in relevant part)

Art. I, sec. 10, par. 1 & 2:

" No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal...pass any ...ex post facto law..."

" No state shall...pass any law... impairing the obligation of contracts..."

Art. III, sec. 2, par. 1:

" The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority;...between citizens of different states"

Art. III, sec. 3, par. 1:

" Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

Art. IV, sec. 2, par. 1:

" The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Art. VI, par. 2 & 3:

" This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

" The ... members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation to support this constitution..."

AMENDMENTS TO THE

UNITED STATES CONSTITUTION:

FIRST AMENDMENT "Congess shall make no

law respecting an establishment of religion, or prohibiting the free exercise thereof: or abridging the freedom of speech, or of the press: or the right of the people peaceably to assemble, and to petition the Government for redress of grievances."

FIFTH AMENDMENT: " No person shall...be deprived of life, liberty or property without due process of law..."

SEVENTH AMENDMENT: " In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law. "

NINTH AMENDMENT: " The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people."

FOURTEENTH AMENDMENT, section 1:

" All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

ART. XIV, section 5: " The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

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28 USC section 1254 COURTS OF APPEALS; CERTIORARI; APPEAL; CERTIFIED QUESTION

Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgement or decree; ...

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28 USC section 1331 FEDERAL QUESTION

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

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28 USC section 1332

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between--

(1) citizens of different States; ...

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28 USC section 1343 CIVIL RIGHTS AND ELECTIVE FRANCHISE

(a) The district courts shall have

original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 41;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or

of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

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42 USC section 1983. CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this

section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S section 1979; Pub.L. 96-170, section 1, Dec. 29, 1979, 93 Stat.1284.)

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42 USC section 1985. CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(1) Preventing Officer From Performing Duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful

discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing Justice; Intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to induce such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of

any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving Persons Of Rights Or Privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal

protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constitued authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the

object of such conspiracy, whereby another is injured in his person or property, or deprived of having exercised any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. section 1980)

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42 USC section 1986. ACTION FOR NEGLECT TO PREVENT

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal

representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. (R.S. section 1981)

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42 USC section 1988 PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS; ATTORNEY'S FEES

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Titles "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the state wherein the court having jurisdiction of such civil or criminal

cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT of 1940 as amended, modified, and in relevant part:

50 USC App Section 464 SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AS APPLICABLE

"...[A]ll of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended ... shall be applicable to all persons in the armed forces of the United States ... until such time as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended...is repealed or otherwise terminated by subsequent Act of Congress ...."

---

50 USC App Section 466 DEFINITIONS

(c) The term "armed forces" shall be deemed to include the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard.

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50 USC App section 510 PURPOSE; SUSPENSION OF ENFORCEMENT OF CIVIL LIABILITIES

In order to provide for strengthen, and expedite the national defense...of

the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service....

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50 USCS Appx section 511 DEFINITIONS

(3) The term "person", when used in this Act...with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such

right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act...shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record.

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50 USC App section 513. PROTECTION OF PERSONS SECONDARILY LIABLE

(1) Whenever pursuant to any of the provisions of this Act...the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or degree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others, whether

primarily or secondarily subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act...the same may , in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or degree was entered.

(4) ...no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in the military service, or if executed by a dependent of such individual...

50 USC App section 520. DEFAULT JUDGMENTS; AFFIDAVITS; BONDS; ATTORNEYS FOR PERSONS IN SERVICE :

(1)...Unless it appears the defendant is not in such service the court may require...that the plaintiff file a bond... to indemnify the defendant, if in military service, against any loss or damage that he may suffer...the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant...

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney

appointed under this Act...to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

(4) If any Judgement shall be rendered ...and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgement may...be opened by the court...

---

50 USCS App section 521 STAY OF PROCEEDINGS WHERE MILITARY SERVICE AFFECTS CONDUCT THEREOF

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to

it by such person or some person on his behalf, be stayed as provided in this Act [50 USCS Appx. sections 501 et seq.], unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service. (Oct. 17, 1940, ch 888, section 201, 54 Stat. 1181)

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50 USCS Appx section 523 STAY OR VACATION OF EXECUTION OF JUDGEMENTS, ATTACHMENTS, ETC.

In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the

defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service--

(a) Stay the execution of any judgment or order entered against such person, as provided in this Act [50 USCS Appx. sections 501 et seq.]; and

(b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act [50 USCS Appx. sections 501 et seq.].

(Oct. 17, 1940, ch 888, section 203, 54 Stat. 1181.)

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50 USCS Appx section 524 DURATION AND TERM OF STAYS; CODEFENDANTS NOT IN SERVICE

Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act

[50 USCS Appx. sections 501 et seq.] may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just...

---

50 USCS Appx section 525. STATUTES OF LIMITATIONS AS AFFECTED BY PERIOD OF SERVICE

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued

prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942] be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment. (Oct. 17, 1940, ch 888, section 205, 54 Stat. 1181; Oct. 6,1942, ch 581, section 5, 56 Stat. 770.)

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50 U.S.C. section 535. PROTECTION OF ASSIGNOR OF LIFE INSURANCE POLICY; ENFORCEMENT OF STORAGE LIENS; PENALTIES

(1) Where any life insurance policy on the life of a person in military service has been assigned prior to such person's period of military service to secure ...

(2) No person shall exercise any right to foreclose or enforce any lien for ...

FEDERAL CIVIL JUDICIAL PROCEDURE AND RULES Fed.R.Civ.P. Rule 4. Process

(d) Summons and Complaint: Person to be Served.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

FEDERAL CIVIL JUDICIAL PROCEDURE AND RULES Fed.R.Civ.P. Rule 15. AMENDED AND SUPPLEMENTAL PLEADINGS "A party may amend the party's pleading... leave shall be freely given when justice so requires ..."

Fed.R.Civ.P. Rule 19. JOINER OF PERSONS NEEDED FOR JUST ADJUDICATION

"(a) Persons to be Joined if Feasible.

...shall be joined...if (1) in the person's absence complete relief cannot be accorded...(2) the person claims an interest... disposition of the action in the person's absence may (i) ...impair or impede the person's ability to protect that interest (ii) leave any of the persons already parties parties subject to a substantial risk...

FEDERAL CIVIL JUDICIAL PROCEDURE AND RULES Fed.R.Civ.P. Rule 55. DEFAULT

(a) ENTRY. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1) BY THE CLERK. When the plaintiff's

claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) BY THE COURT. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action ...

MISSOURI REVISED STATUTES :

506.140 WHO SHALL SERVE PROCESS Service of process except as otherwise provided shall be made by a sheriff, or his deputy, or in case the sheriff in any cause is for any reason disqualified, then process may be issued to and served by the coroner of the county in which such process is to be served; or for good cause shown, some person, other than a sheriff or coroner, may be specially appointed by the court for service of process in any cause, but such appoint- ment shall be valid for service of the process only for which such person was specially appointed. (L.1943 p. 353 section 26)

506.150. SUMMONS AND PETITION SHALL BE SERVED TOGETHER---HOW SERVICE SHALL BE MADE The summons and petition shall be served together. Service shall be made as follows: (4) Upon a public, municipal, governmental, or quasi-public corporation

or body, by delivering a copy of the summons and of the petition to the clerk of the county court in the case of a county, to the mayor or city clerk or city attorney in the case of a city, and to the chief executive officer in the case of any other public, municipal, governmental or quasi-public corporation or body.... (L.1943 p. 353 section 27)

56.010. PROSECUTING ATTORNEY -- ELECTION --QUALIFICATIONS: ...shall be elected in each county of this state a prosecuting attorney...has been a bona fide resident of the county in which he seeks election for twelve months next preceding the date of the general election at which he is a candidate for such office...

56.060 DUTIES-GENERAL-IN CHANGES OF VENUE-ON APPEAL Each Prosecuting attorney shall commence and prosecute all civil and criminal actions in his county

in which the county or state is concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county....or shall employ some attorney at his own expense to represent the state in the courts....

56.065 PROSECUTING ATTORNEY TO DEVOTE FULL TIME TO OFFICE (CERTAIN FIRST AND SECOND CLASS COUNTIES) " Notwithstanding the provisions of section 56.360, the prosecuting attorney of every first class county and of counties of the second class having a population of more than one hundred thousand inhabitants, and of counties of the second class having a population of more than thirty thousand containing a part of a city having a population of more than four hundred thousand, and of counties of the second

class having a population of more than eighty thousand at the 1970 decennial census, but less than ninety thousand shall devote his time full time to his office, and except for the performance of his official duties, shall not engage in the practice of law."

56.070 PROSECUTING ATTORNEY'S DUTIES--EXCEPTION

" The prosecuting attorney shall represent generally the county in all matters of law, investigate all claims against the county, and draw all contracts relating to the business of the county. He shall give his opinion, without fee, in matters of law in which the county is interested, and writing when demanded, to the county commission or any commissioner thereof, except in counties in which there is a county counselor...."

56.110. IF INTERESTED IN CASE, COURT TO APPOINT SUBSTITUTE " If the prosecuting attorney and assistant prosecuting attorney be interested or shall have been employed as counsel in any case where such employment is inconsistent with the duties of his office, or shall be related to the defendant in any criminal prosecution, either by blood or by marriage, the court having criminal jurisdiction may appoint some other attorney to prosecute or defend the cause. (R.S.1939 section 12948)

56.360. EMPLOYMENT IN CRIMINAL CASES PROHIBITED--CIVIL PRACTICE AUTHORIZED.

"It shall be unlawful for any prosecuting attorney or circuit attorney, or any assisting prosecuting attorney or any assistant circuit attorney, during the term of office for which he shall have been elected or appointed, to accept employment by any

party other than the state of Missouri in any criminal case or proceeding; provided, that nothing in this section shall be deemed to preclude the officers specified in this section from engaging in the civil practice of law. Any violation of the provisions of this section shall be deemed a misdemeanor."

56.631 COUNTY COUNSELOR--CERTAIN FIRST CLASS COUNTIES

"The county commission of any county of the first class not having a charter form of government or any second class county which contains part of a city with a population of at least three hundred fifty thousand may by order of the court appoint some suitable person to the position of county counselor...

4. The county commission may require the county counselor to devote his full time to the duties of his office.

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ORDER: Filed May 20, 1988 ..... 6a-9a
JUDGMENT IN A CIVIL CASE: Filed May 20, 1988..... 9a-10a
ORDER: Filed Feb. 9, 1988 ..... 10a-13a
LETTER REFRRED TO IN ABOVE ORDER from:
R. K. ASH, JR., COLONEL, USAF.... 14a-16a
LETTER OF MAJOR MARKER 17a-32a
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COMPLAINT filed Nov. 27, 1987 ... 33a-39a
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LOCAL RULES OF THE U.S. DIST. CT. for the WESTERN DIST. OF MO. Rule 1. F. . 39a-41a

---

Filed with the 8th Cir. Court of Appeals
Marker v. Rieschel, et al. No. 88-1905:

ATTORNEY LYNCH'S LETTER Filed: Feb. 28 1989 ..... 41a-47a
Sworn Statement from Eugene R. Novak, Junior, Long Lane, Dallas Co. Missouri Filed: Feb. 28, 1989 ..... 48a

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Misc. Filed with the Courts as indicated. 48a-54a

Photo Copies of nearly all of the above was filed with This Supreme Court on May 26, 1989 when we requested addition time.

Constitution, statutes, and regulation:

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No. 89-254

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JAMES A. MARKER, JR. and

BEVERLY J. MARKER,

PETITIONERS,

vs.

WAYNE K. RIESCHEL, DALLAS COUNTY PROSECUTING ATTORNEY; JERRY COX, DALLAS COUNTY SHERIFF; EARNIE BURTIN; MAE BURTIN;

RESPONDENTS.

BRIEF IN OPPOSITION TO

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

JOHN G. NEWBERRY
Attorney of Record for Wayne K. Rieschel
Suite 203, 2135 East Sunshine
Springfield, MO 65804
417-883-5535

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Luecke v. Mercantile Bank of Jonesboro, 720 F.2d 15 (8th Cir. 1983)

Ricard v. Birch, 529 F.2d 214 (4th Cir. 1975)

Zitomer v. Holdsworth, 449 F.2d 724 (3rd Cir. 1971)

50 U.S.C. app. § 521

50 U.S.C. app. § 525

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CITATIONS TO OPINIONS

AND JUDGMENTS DELIVERED

IN THE COURTS BELOW

Marker v. Rieschel, No. 87-3650-CV-S-4, (W.D. Mo. May 20, 1988) aff'd No. 88-1905 (8th Cir. Jan. 9, 1989) (per curiam) and (8th Cir. Apr. 7, 1989)

STATUTES AND REGULATIONS WHICH THE CASE INVOLVES

50 U.S.C. app. § 521. Stay of proceedings where military service affects conduct thereof

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some other person on his behalf, be stayed as provided in this Act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his

defense is not materially affected by reason of his military service.

50 U.S.C. § 525. Statutes of limitations as affected by period of service

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right of privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors'

Civil Relief Act Amendments of 1942 [enacted October 6, 1942] be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment.

Sup. Ct. R. 17.1 Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial disretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided

a federal question in a way in conflict with a state court of last resort; or has far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Sup. Ct. R. 19.3 Review on certiorari--how sought -- parties

.3. Counsel for the petitioner shall enter an appearance, pay the docket fee, and file, with proof of service as provided by Rule 28, 40 copies of a petition which shall comply in all respects with Rule 21. The case then will be placed on the docket. It shall be the duty of counsel for the petitioner to notify all respondents, on a form supplied by the Clerk, of the date of filing and of the docket number of the case. Such notice shall be served as required by Rule 28.

Sup. Ct. R. 21.4 The petition for certiorari

.4. The petition for writ of certiorari shall be as short as possible, but may not exceed 30 pages, excluding the

subject index, table of authorities, any verbatim quotations required by subparagraph 1(f) of this Rule, and the appendix.

Sup. Ct. R. 22.6 Brief in opposition--reply -- supplemental briefs

.6. Any party may file a supplemental brief at any time while a petition for writ of certiorari is pending calling attention to new cases or legislation or other intervening matter not available at the time of the party's last filing. A supplemental brief, restricted to such new matter, may not exceed 10 pages. Forty copies of any such brief, prepared in accordance with Rule 33 and served as prescribed by Rule 28, shall be filed.

Sup. Ct. R. 28.4(c) Filing and service--special rule for service where constitutionality of Act of Congress or state statute is in issue

.4(c) In any proceeding in this Court wherein the constitutionality of any statute of a State is drawn in question, and the State or any agency, office, or employee thereof is not a party, the initial pleading, motion, or paper in this Court shall recite that 28 U.S.C. § 2403(b) may be applicable and shall be served upon the Attorney General of the State. In proceedings from any court of the United States as defined by 28 U.S.C. § 451, the initial pleading, motion, or paper shall state whether or not any such court, pursuant to 28 U.S.C. § 2403(b), has certified to the State Attorney General the fact that the constitutionality of such statute of the State was drawn in question.

Mo Rev. Stat. § 56.360. Employment in

criminal cases prohibited -- civil practice authorized

It shall be unlawful for any prosecuting attorney or circuit attorney, or any assistant prosecuting attorney or any assistant circuit attorney, during the term of office for which he shall have been elected or appointed, to accept employment by any party other than the state of Missouri in any criminal case or proceeding; provided, that nothing in this section shall be deemed to preclude the officers specified in this section from engaging in the civil practice of law. Any violation of the provisions of this section shall be deemed a misdemeanor.

STATEMENT OF THE CASE

James Allen Marker, Jr., and Beverly Jean Marker, hereinafter referred to as petitioners, filed a Complaint on the 27th day of November, 1987, in the United States District Court, Western District of Missouri, Southern Division, against Wayne K. Rieschel, hereinafter referred to as respondent, and others. In their Complaint, the petitioners alleged numerous civil wrongs arising from a boundary dispute. This boundary line dispute is also the subject of an action in the Circuit Court of Dallas County, Missouri, between petitioners and Earnie and Mae Burtin, named defendants. In petitioners' Complaint filed in the United States District Court, was included a Request For Stay "For The Maximum Period

Of Time," pursuant to 50 U.S.C. app. § 521, a provision of the "Soldiers' And Sailors' Relief Act."

By order of the District Court, on the 9th day of February, 1988, a temporary stay was granted to the 13th day of May, 1988, at which time petitioners were directed to state facts currently existing "which support his position that by reason of his military service, his ability to prosecute this action is materially affected." Petitioner James A. Marker, Jr., responded by letter, requesting the suit be stayed until December 31, 1995. The District Court entered an order and judgment dated the 20th day of May, 1988, dismissing petitioners' Complaint without prejudice [App. p. A-1 - A-4]. The District Court, in its final order, noted such factors in support of its decision,

as: Pendency of the state court action between petitioners and defendants Earnie and Mae Burtin; the protection afforded petitioners by the tolling provisions of 50 U.S.C. app. § 521; the interest of respondents in a prompt resolution of plaintiffs' claims; and the business of the court [App. p. A-5 - A-11].

Petitioners filed a Notice Of Appeal on the 15th day of June, 1988. The United States Court of Appeals for the Eighth Circuit, in its Order of the 7th day of April, 1989, affirmed the decision of the United States District Court for the Western District of Missouri, Southern Division. Petitioners' petition for rehearing and rehearing en banc was denied on the 8th day of March, 1989, the court issuing its mandate on the 17th day of March, 1989. Petitioners also filed a

motion for stay on the 21st day of March, 1989, which was further denied by the United States Court of Appeals on the grounds that because the mandate had been issued, the court had no further jurisdiction [App. p. A-12 - A-13].

Petitioners then applied for an extension of time in which to file a Petition For Writ Of Certiorari in this Court which was granted, allowing filing on or before the 6th day of July, 1989, by Order of Justice Harry A. Blackmun, dated the 30th day of May, 1989. Petitioners again requested an extension of time until the 6th day of August, 1989. Petitioners filed a Petition For Writ Of Certiorari with this Court on or about this date. An additional and amended Petition For Writ Of Certiorari was filed the 15th day of August, 1989.

SUMMARY OF ARGUMENT

Respondents respectfully request the Court to deny petitioners' Petition For Writ Of Certiorari for several reasons. First, the decision of the United States District Court in which petitioners' Complaint was dismissed without prejudice was a proper application of the protections afforded by the Soldiers' and Sailors' Relief Act. Second, petitioners have attacked the constitutionality of Mo. Rev. Stat. § 56.360, which allows prosecuting attorneys to have private clients. This attack on the constitutionality of a state statute is improperly made since petitioners failed to serve the Attorneys General of the State of Missouri any notice of the pendency of these actions, as required by Sup. Ct. R.

28.4(c). Finally, the form of petitioners' Petition For Writ Of Certiorari is plagued with numerous procedural insufficiencies as was the service of this petition upon respondent and fails to meet the requirements of this Court as set forth in the Supreme Court Rules governing these petitions.

ARGUMENT

Respondents respectfully request the Court to deny petitioners' Petition For Writ Of Certiorari for the reason that the trial court properly disposed of the case by entering a judgment of dismissal without prejudice in order to protect the petitioners' rights pursuant to the Soldiers' and Sailors' Relief Act.

In its Order of the 20th day of May, 1988, the United States District Court for the Western District of Missouri, Southern Division, accepted the facts as set forth in petitioner's letter requesting a stay pursuant to 50 U.S.C. app. § 521, by applying 50 U.S.C. app. § 525, stating:

> As pointed out in the Court's order of February 9, 1988, the Missouri statute of limitations is tolled pending Major Marker's military service. It clearly is not in the interest of the

> defendants of this case to have it pending beyond the date of December 31, 1995, nor is it in the interest of the business of this Court. This Court seriously doubts that it is in the plaintiffs' interest to postpone the disposition of this case until some time after December 31, 1995. [App. p. A-3 - A-4]

The petitioners filed an appeal in the United States Court of Appeals for the Eighth Circuit requesting this order be reversed. The United States Court of Appeals for the Eighth Circuit affirmed the District Court's Order finding "no abuse of discretion in the District Court's refusal to stay the Markers' cause of action until 1995, particularly considering that the applicable Missouri statute of limitations is tolled during James Marker's military service." [App. p. A-9 - A-10]

50 U.S.C. app. § 525 governs a tolling

of the statute of limitations for those in military service, stating:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service . . . whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service . . .

In Ricard v. Birch, 529 F.2d 214, 217 (4th Cir. 1975) the United States Court of Appeals held that "[t]he tolling statute is unconditional. The only critical factor is military service; once that circumstance is shown, the period of limitations is automatically tolled for the duration of the service." In Lester v. United States, 487 F.2d 1033, 1038 (N.D. Tex. 1980), the United States

District Court held that the period of time an individual is engaged in "military service is not to be included in the computing of any period for the bringing of **any** action by or against any person in the military service."

Moreover, the Eighth Circuit Court of Appeals' holding is in accordance with case law interpreting the application of the tolling of the statute of limitations provision of the Soldiers' and Sailors' Relief Act. Zitomer v. Holdsworth, 449 F.2d 724, 726 (3rd Cir. 1971), stands for the proposition that one may not rely on the Soldiers' and Sailors' Relief Act to suspend prosecution of a cause of action indefinitely. Rather, the Zitomer court found that the trial court properly dismissed plaintiff's case for failure to prosecute and did not violate 50 U.S.C.

app. § 525 nor did any other provision of the Act justify allowing plaintiff's case to remain pending for a period of years.

The Eighth Circuit also addressed the underlying property dispute in this case which has given rise to a quiet title action currently pending in the Circuit Court of Dallas County, Missouri. The Eighth Circuit relied on the abstention doctrine, stating:

> Principles of abstention are particularly appropriate when state's property rights are involved, Luecke v. Mercantile Bank of Jonesboro, 720 F.2d 15, 16 to 17 (8th Cir. 1983), and as a state action is pending, the state law questions can be resolved without lengthy delay. Edwards v. Arkansas Power & Light Co., 683 F.2d 1149, 1157 (8th Cir. 1982). [App. p. A-10]

Petitioners have failed to show any justification under Sup. Ct. R. 17.1 for this matter to be reviewed by this Court. The Eighth Circuit has not rendered a

decision in conflict with any other federal court of appeals, a state court of last resort has not decided a federal question in conflict with that of another state court of last resort, nor have petitioners shown that this is an important question of federal law which has never been decided by this court or that it conflicts with other applicable decisions of this court.

The United States District Court for the Western District of Missouri, Southern Division, as well as the United States Court of Appeals for the Eighth Circuit, correctly and accurately applied the Soldiers' and Sailors' Relief Act by holding that any cause of action asserted by Major Marker was tolled until he completed his military service. The interests of both petitioners and

respondents were carefully considered by the court as evidenced by their opinions. The District Court did not prejudice any rights of Major Marker by dismissing his cause of action without prejudice. Petitioners are free to refile their case upon the close of Major Marker's military service.

For the foregoing reasons, respondent asks the Court to find there was no abuse of discretion on the part of the District Court in applying the Soldiers' and Sailors' relief act, nor on the part of the Eighth Circuit of Appeals in upholding the District Court's decision.

Respondent respectfully requests this Court to deny petitioners' request for review of the constitutionality of Mo. Rev. Stat. § 56.360 for the reason that petitioners have wholly failed to give

proper notice to the Missouri Attorney General as required by Sup. Ct. R. 28.4(c), which states:

> In any proceeding in this court wherein the constitutionality of any statute of the state is drawn in question, and the state or agency, officer or employee thereof is not a party, the initial pleading, motion, or paper of this Court shall recite that 28 U.S.C. §2403(b) may be applicable and shall be served upon the Attorney General of the State.

Petitioners have failed to notify the Attorney General of the State of Missouri that they are challenging the constitutionality of the aforementioned statute which allows prosecutors to participate in private practice and retain private clients concurrently while discharging their prosecutorial duties. For this reason, respondent requests that petitioners' request for review of the

constitutionality of this Missouri statute be denied.

Petitioners have wholly failed to follow several other procedural dictates of the Supreme Court Rules. Sup. Ct. R. 21.4 specifically states that the petition for writ of certiorari may not exceed 30 pages. Petitioners' Petition For Writ Of Certiorari is approximately 50 pages in length.

Furthermore, petitioners initially filed a Petition For Writ Of Certiorari on or about the 6th day of August, 1989, and subsequently filed a revised version of this Petition For Writ Of Certiorari on the 15th day of August, 1989. Sup. Ct. R. 22.6 states that a supplemental brief filed by a party to call attention to a new matter unavailable at the time of the last filing, be "restricted to such new

matter, [and] may not exceed 10 pages." Petitioners did not in any way identify their subsequently filed brief as an amended brief or a supplemental brief.

Additionally, Sup. Ct. R. 19.3 requires petitioner file a proof of service of a petition for writ of certiorari and that such notice should be served pursuant to Sup. Ct. R. 28. There was no certificate whatsoever accompanying petitioners' brief when received by respondent, nor was the Petition dated in any manner to identify its date of filing. Respondent is aware that petitioners have filed their Petition For Writ Of Certiorari pro se, but the combined effect of the numerous procedural errors and problems contained in and surrounding the filing of said brief are blatantly in error under the Supreme Court Rules.

For these reasons, respondent respectfully requests that petitioners' Petition For Writ Of Certiorari be denied.

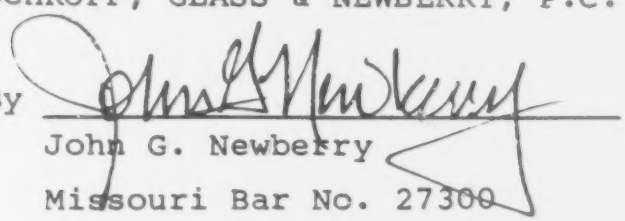
CONCLUSION

Respondent requests that this Court carefully review the Petition For Writ Of Certiorari filed by petitioners and deny the same on the basis that the District Court and the Eighth Circuit Court of Appeals properly held that the Soldiers' and Sailors' Relief Act tolled any statute of limitations governing Major Marker's cause of action, and that to properly protect the interests of all parties the matter should be dismissed without prejudice rather than allow same to remain pending indefinitely on the docket of the court.

Furthermore, the Petition For Writ Of Certiorari filed by petitioners should be denied based on serious and highly prejudicial procedural problems contained

in and surrounding the filing of their Petition. The constitutionality of a state statute is being challenged, yet the Attorney General of the State of Missouri has been afforded no notice of this challenge whatsoever. In addition, there are irregularities regarding length, filing of additional or supplemental petitions without identifying such, and the lack of certificate of service or dating of their Petition in a manner to afford respondent notice of the date upon which the response time should run.

Respectfully submitted,
SCHROFF, GLASS & NEWBERRY, P.C.

By 
John G. Newberry
Missouri Bar No. 27300
Attorney of Record for
Wayne K. Rieschel, Respondent

APPENDIX

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI

SOUTHERN DIVISION

JAMES ALLEN MARKER, JR., et al.,

Plaintiffs,

vs.

WAYNE K. RIESCHEL, et al.,

Defendants.

ORDER

On February 9, 1988, the Court entered an order staying any action in the above-captioned case through May 13, 1988 on the basis that one of the plaintiffs James A. Marker, Jr. was in the military service. The Court directed Major Marker to file a report in writing advising this Court of any facts existing at the time which would materially affect his ability to prosecute his action on or before May 6, 1988. Under date of May 5, 1988, the Clerk

received a nine and one-half page single spaced typewritten report from Mr. Marker. In conclusion he indicated that he felt his military service would prevent him from prosecuting this action until his release from same and requested a stay until December 31, 1995. Major Marker did not indicate any efforts which he had made to obtain a leave or other dispensation from the military authorities which would give him an opportunity to prosecute this action.

The Court is aware that there is a quiet title action pending between Major Marker's wife Beverly Jean Marker and Earnie and May Burtin. In short, the underlying dispute in this case is over a property boundary line and the state court action seeks to resolve that issue. Disposition of this issue is neither

complex nor would it take an extended period of time in which to try the issues involved and dispose of that case.

The Court will accept the facts as set forth in Major Marker's letter dated April 29, 1988 and filed in this case on May 5, 1988 relative to the interference of his military service in effectively prosecuting this case. However, as pointed out in the Court's order of February 9, 1988 the Missouri statute of limitations is tolled pending Major Marker's military service. It certainly is not in the interests of the defendants in this case to have it pending beyond the date of December 31, 1995 nor is it in the interest of the business of this Court. This Court seriously doubts that it is in the plaintiffs' interest to postpone the

disposition of this case until sometime after December 31, 1995.

It is the opinion of this Court that it would be in the interests of justice and in the best interests of all parties concerned for the case to be dismissed without prejudice to a refiling by plaintiffs. Therefore, it is

ORDERED that the Clerk is directed to enter a judgment of dismissal without prejudice.

/s/ Russell G. Clark

Russell G. Clark, District Judge

United States District Court

Dated: May 20, 1988

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 88-1905

Appeal from the United States
District Court for the
Western District of Missouri

James Allen Marker, Jr., and
Beverly Jean Marker,

Appellants,

v.

Wayne K. Rieschel, Dallas County Prosecuting Attorney; Jerry Cox, Dallas County Sheriff; Earnie Burtin; Mae Burtin,

Appellees.

Submitted: December 22, 1988

Filed: January 9, 1989

Before McMILLIAN, JOHN R. GIBSON, and MAGILL, Circuit Judges.

EIGHTH CIRCUIT PER CURIAM

PER CURIAM.

James and Beverly Marker appeal pro se from the district court order dismissing their complaint without prejudice. We affirm.

The Markers filed this diversity suit on November 27, 1987, alleging various constitutional violations arising out of a boundary-line dispute with their neighbors, Earnie and Mae Burtin. Named as defendants in their complaint were Wayne Rieschel (the county prosecuting attorney), Jerry Cox (the county sheriff), and the Burtins. Included in the complaint was a request for a stay pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 521, until the year 1995, when James Marker completes his military service, and a request for an injunction of a pending

state court action involving the same property dispute.

On February 9, 1988, the district court granted the Markers a temporary stay until May 13, 1988, and directed them to advise the court of any facts which materially affected their ability to prosecute their case. The Markers responded that James Marker's military service interfered with his effective prosecution of the case, and requested the court to stay the cause of action until 1995.

The district court dismissed the Markers's complaint without prejudice, finding there were no facts to support a stay. In reaching this result, the court noted that the underlying property boundary dispute was pending in state court, and that the issue was not complex

nor would it take an extended period of time to resolve. In addition, the court noted that the Missouri statute of limitations governing the Markers' cause of action tolled during James Marker's military service, and that it was not in the interests of the defendants, the Markers, or of the court to have the case pending until 1995. This appeal followed.

Title 50 U.S.C. § 521 provides that the court in which an action is pending has the discretion to stay the proceedings if the ability of the plaintiff to prosecute the action is "materially affected by reason of his military service." The stay provision is not mandatory and the court has the ultimate discretion in determining, from all the circumstances of the case, whether a stay is warranted. Boone v. Lightner, 319 U.S.

561, 564-65 (1943); Tabor v. Miller, 389 F.2d 645, 647 (3d Cir.), cert. denied, 391 U.S. 915 (1968). The stay provision applies only to persons in military service. Growder v. Capital Greyhound Lines, 169 F.2d 674, 675 (D.C. Cir. 1948).

Title 50 U.S.C. § 535 mandates that the statute of limitations governing a suit in which a serviceman is a party be tolled during that person's military service. Bickford v. United States, 656 F.2d 636, 640 (Ct. Cl. 1981). Spouses of servicemen are not entitled to the benefits of the tolling provision of this section. Lester v. United States, 487 F. Supp. 1933, 1039 (N.D. Tex. 1980).

We find no abuse of discretion in the district court's refusal to stay the Markers' cause of action until 1995, particularly considering that the

applicable Missouri statute of limitations is tolled during James Marker's military service. Although the Markers correctly note that Mrs. Marker does not receive the benefits of the tolling section, she also is not entitled to a stay.

Furthermore, as noted by the district court, there is currently a quiet-title action pending in the state court which addresses the underlying property dispute in this case. Principles of abstention are particularly appropriate when state's property rights are involved, Luecke v. Mercantile Bank of Jonesboro, 720 F.2d 15, 16-17 (8th Cir. 1983), and as a state action is pending, the state law questions can be resolved without lengthy delay. Edwards v. Arkansas Power & Light Co., 683 F.2d 1149, 1157 (8th Cir. 1982).

We have considered the Markers' remaining points of error and find them to be without merit.

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

[Do not publish.]

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 88-1905

Appeal from the United States
District Court for the
Western District of Missouri

James Allen Marker, Jr., and
Beverly Jean Marker,

Appellants,

v.

Wayne K. Rieschel, Dallas County Prosecuting Attorney; Jerry Cox, Dallas County Sheriff; Earnie Burtin; Mae Burtin,

Appellees.

Filed: April 7, 1989

ORDER

A petition for rehearing and rehearing en banc was denied March 8, 1989, and the

mandate of this court issued March 17, 1989. Since that time appellants have filed a motion for stay on March 21, 1989. As the mandate has issued, this court has no further jurisdiction in this case. Appellants are notified that further filings may result in imposition of sanctions.

A true copy.

Attest:

/s/ Robert D. St. Vrain

CLERK, U. S. COURT OF APPEALS, 8TH CIRCUIT

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

No. 89-254

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

JAMES A. MARKER, JR., AND BEVERLY J. MARKER,

Petitioners,

v.

WAYNE K. RIESCHEL, et al.

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITIONER'S REPLY MEMORANDUM

James A. Marker, Jr., and
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JAMES A. MARKER, JR., et al.

Petitioners,

v.

WAYNE K. RIESCHEL, et al.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

Petitioners James and Beverly Marker respectfully reply to the respondents brief. Mr. Wayne K. Rieschel, herein referred to as the respondent, appears to be the only respondent that plans to offer opposition.

After reviewing respondents brief, petitioners find what we believe to be error and must disagree with respondents

brief on almost [illegible]ry point except that portion where he begins his conclusion by requesting "... that this Court carefully review the Petition For Writ of Certiorari filed by petitioners...".

We would be the first to admit lack of experience and writing skills, therefore we respectfully request that this Court look carefully at what we have presented thus far, not only for our sake, but for others so situated.

After careful examination we believe you will see the questions we have presented will have far reaching effects and should be considered by this Court and that the respondent has presented an insufficient opposition to our petition.

RESPONDENTS POSITION

Respondents complain that our petition "...is plagued with numerous procedural insufficiencies..." and rules violations in addition to arguing for upholding the

8th Cir. opinion by selectively overlooking very important points. We will attempt to address each new issue raised.

PROCEDURAL COMPLAINTS ANSWERED

Respondents cite Sup. Ct. R. 28.4 (c) and argue that we should have notified the Attorney General of Missouri. The key words in this rule that we believe respondents did not note are: "...and the State or any agency, officer, or employee thereof is not a party...". The rest of this rule seems conditioned on whether or not any of those listed are a party to the action: "...is not a party...".

When the County was a party and the respondent is the prosecutor (a state official) responsible for answering for the state (p 42)* and the sheriff is also

---

* References to pages proceeded by the letter "p" are to the petitioners petition for Certiorari. References to pages proceeded by the letter "r" are to the respondents brief in opposition.

a party it seems that the conditions of Sup. Ct. R. 28.4 (c) are fully met by including the proper parties. This fact seems to be further reinforced by Mo. Rev. Stat. section 56.060 (p 84a 85a) where the state has delegated to the county prosecutors the agency powers to act on behalf of not only the county but the state also. It is no fault of ours that respondent failed to preform his official duties on behalf of the state, that is between them.

Respondents complain under Sup. Ct. R. 21.4 about the length of the petition for writ of certiorari and how it was served, et cetera. The petition was served as instructed by the clerks office. When the petition was filed on the 3rd of August 1989 the clerk returned it for double spacing and other work as per Sup. Ct. R. 33.7 and pointed out that "our time would be preserved" if the corrected

petition was promptly substituted and also that Sup. Ct. R. 33.3 provided for more pages.

A simple examination of the copies mailed the 3rd and 15th of August will quickly reveal they are basically the same, and are copies of the petition for writ of certiorari, and neither is a supplemental brief under Sup. Ct. R. 22.6. The petition was made as short as possible considering my ability and the number of questions involved.

Certainly the respondent would understand no one would take the time or go to the expense of duplicating the same petition unless instructed to do so.

Respondents further complain regarding Sup. Ct. R.19.3. The form supplied by the clerk was served on the respondents the same day it was given to us and in the manner we were instructed by the clerk, showing the August 3rd 1989

docketing date. All the papers filed with this Court so far were hand carried to the clerks office for inspection before submitting them to be certain that if they were not proper we would know of it the same day.

Respondents question about how to figure his time is answered in Sup. Ct. R. 22.1 where it is stated: "Respondent shall have 30 days...after receipt of a petition...". Certainly he knows when he received it, and if not we would have been glad to inform him if his attorney had called us. We have the postal return receipts. I am not sure whether he should have figured the 30 days from the receipt of the first single spaced copies or from receipt of the corrected double spaced copies received by him almost two weeks later on 8/18/89. While respondent complains of our brief I note a number of defects in his own, such as violation of

Sup. Ct. R. 33.5 (b): "...with correct references to the pages where they are cited.", and other errors. But than I understand the human element.

While recognizing that our pro se work is not perfect we would hope that you could see that we tried to put it together to the very best of our abilities and tried to make it as professional as possible, and would agree it is not "plagued" with insufficiencies and that the service of the petition was correct.

SUPREME COURT RULE 17.1 (a)

Respondent cites Sup. Ct. R. 17.1 and complains that we have not met it's requirements (r 22-23). Certainly questions 1 and 2 fully meet Sup. Ct. R. 17.1 (a) as do some of the other questions.

The respondents cite ZITOMER v HOLDSWORTH, 449 F.2d 724, 726 (3rd Cir. 1971), hereafter referred to as

ZITOMER-2, and try to use it to support the lower court action (r 21-22).

The above case was earlier ZITOMER v HOLDSWORTH 178 F.Supp 504, which I will hereafter refer to as ZITOMER-1.

ZITOMER-1 was filed in the 1950's on an action that occurred two years and twelve days before filing, twelve days beyond the Penn. two year statute of limitations. The court allowed the civilian plaintiff to rely on 50 USC App sec. 525 as the defendant was than in the Navy. The civilian plaintiff neglected to make any effort to prosecute his action in ZITOMER-1.

The district court was found correct in dismissing ZITOMER-2 in 1971, an action that occurred in the 1950's and where no stay had been requested or granted. On page 726 the Court notes that there is no evidence to show the defendant is still in service. Had the civilian plaintiff

pressed his action perhaps the military defendant would have requested a stay and the action would have been preserved. Or the civilian plaintiff could have waited until the serviceman got out of the military to file the case and than he would have had two years from military discharge to file his case if he relied on 50 USC App sec. 525. What the 3rd Circuit Court held on page 726 was that sec. 525 did not stay an action and "...has no applicability to an action duly filed and served within the applicable statute of limitations...".

RICARD v BIRCH 529 F.2d 214 (4th Cir. 1975) has no application to our case, which was filed WITHIN the applicable statute of limitations.

The respondents while citing LESTER v UNITED STATES 487 F.Supp. 1033 have selectively ignored the fact that LESTER held that the tolling provision does not

apply to spouses of servicemen.

It would appear that Congress included plaintiffs in 50 USC App sec. 521 for situations just such as ours. Certainly they realized there would be times when the military persons rights could not be protected without including one or more of his dependents or some civilian person who's interests were so entwined with his own, and in such cases a stay may be needed by the military person for the entire action. Non-military plaintiffs and co-plaintiffs can not rely on 50 USC App sec. 525 unless the defendant is in military service. However the lower courts have frequently upheld 50 USC App sec. 521, the stay provision, as covering the whole action and all parties as noted in our petition (p 25-27).

The respondents argue we are free to refile our case later (r 24) and that the District Courts action to dismiss the

case "...properly protect the interest of all parties..." (r 29). They have overlooked my rights under the seventh amendment knowing full well that on page ten (10) of the complaint, that began this action in Nov 1987, that a "Demand for Jury trial" was made very plainly near our signatures, and near where the complaint was notarized in Florida. 50 USC App sec. 525 will not protect my interests in this action and we do not believe it will protect Major Marker in a cause of action in which a case has already been filed within the applicable statute of limitations (p 17-21).

SUPREME COURT RULE 17.1 (c)

The remainder of the questions we believe you will find meet Sup. Ct. R. 17.1 (c) and are covered in our petition.

Respondent argues for abstention. If you have read Attorney Lynch's letter (p 41a-47a) and the excerpts from our

complaint (p 33a-39a) and our petition one can see that state property rights are not part of this action and the principles of abstention were not appropriate in this case (p 38-40).

Constitutional questions are raised in questions four and seven. It was clear to respondent that we were questioning "civil practice" in Mo. rev. Stat. sec. 56.360, however he seems to have not noticed or understood our other challenges under question seven (p 40-55). We also question the method of selecting Judges and prosecutors (p iii 7b), and custom and usage/negligence (p iv 7c).

In a county area where white supremacist groups are very active, the county seat is around 2,000, and the sheriff, prosecutor, Judge and Circuit Judge, all grew up there in the county, and are voted into office by their friends and family and depend on them for

their job and living, and where todays decisions can influence the next election an outsider with different values, family and friends of other races is at an unfair advantage to say the very least.

When the military outsider lives in an extremely remote location near the end of the county road and phone service is limited to that shared with their adversarys, they find they have no access to their house or means to call for help that their adversarys can not easily compromise. This is extremely difficult when there is no support group of family or others who share your values. Those few others who do not like the county system are either afraid to speak out, for good reason, or are run off if they do. When your life has been threatened, attempts made on your life, many other acts committed, and you see those in the local law enforcement system supporting

the criminal, something is very wrong.

Major Marker has spent his life in law enforcement and we realize that police can not be all places at all times and can not guarantee protection. However there is a problem when law enforcement repeatedly refuse to respond because the adversary is or was represented by the prosecutor and was encouraged to commit what we believe to be criminal acts by those sworn to uphold the law and defend the Constitution.

One of the seven counts in our complaint was negligence, and I believe I should explain, in part, how I see it should apply so you can see why we believe we are entitled to some of the relief at least in regards to this count: If a person has a broken step at their house and neglects to fix it they are guilty of negligence if someone is hurt. The county is in charge of the schools

and has a duty to properly prepare both their officials and students. It is a well known fact that a baby is not born knowing to hate certain types of people, it is learned behavior. It has been over 120 years since slavery was outlawed in Missouri and the 14th Amendment passed. The federal laws protecting civil rights and requiring equal protection et cetera have been on the books many years.

When such groups as the K.K.K., the C.S.A., Aryan Nations, Fellows of the Order for the Obliteration of the Lesser Species (F.O.O.L.S), The White Patriots and similar groups are known to be active in an area county officials have a duty.

In as the County runs the schools and train their officials, they have a duty to try and defuse the effects of such extremist groups and to teach tolerance, respect for the Constitution and the rights of others through the schools and

other education programs. If this duty is ignored, or only lightly touched upon and people are injured as a result the county is negligent just as surely as the person with the broken step. Such changes do not happen overnight, but they have had many years to have made some effort. Education is the long term answer that will only happen in such areas if mandated by this Court. We have been grievously hurt as a result of Dallas Counties negligence.

I hope you will also take a look at the papers we submitted to Justice Blackmun in May 1989, if that is agreeable with him. They contain a little more information about Dallas County and the problems in Missouri.

My husband is in Panama South America now and I can not stay in our own place because of the situation in Dallas County but must stay instead in a rented house.

It is sad for a military person who has devoted his life to law enforcement to be so denied equal protection under the law for his family. There is no way to resolve any of our problems without it.

Without relief from this Court not only is it unsafe to stay in our house, or let others use it, but I can not remain there safely long enough to resolve the case in state court. Our home state of Alaska is too far to travel from every few weeks to met the terms of our insurance.

Everything we had saved towards retirement and a lifetimes collection of personal items, mementos, furniture, items of high value, et cetera, are hostage there in Dallas County, except for those items stolen already.

We were shocked to learn what goes on in Dallas County, but friends have told us since that there are many places with similar problems. The answer is to

remove unconstitutional laws that help to perpetuate an unequal system, and also through education. Local government must recognize and fulfill its duties, seeking outside help if need be, instead of continuing its custom of neglect of duty.

This nation is becoming more mobile and diverse every day. Travelers. strangers, outsiders, military, and all Americans have a right to travel, live where they choose, and are entitled to equal protection where ever they may be.

The 8th Circuit Court has not allowed any of the protection under the Soldiers' and Sailors' Civil Relief Act that congress intended and instead has improperly applied the Act, has allowed violation of the Seventh Amendment of the Constitution, ignored relief due us under the default judgement we are entitled to from the County, and are in conflict with opinions of other federal courts of

appeals, state courts of last resort, this Court, and have sanctioned such a departure by a lower court, deciding important questions of federal law which has not been, but should be, settled by this Court. In the interest of justice, our interests, and future generations this case should be heard.

I hope this reply addresses fully, and clarifies those arguments raised by respondent.

CONCLUSION

For the foregoing reasons and the reasons presented in our petition for writ of certiorari, the writ of certiorari should be granted.

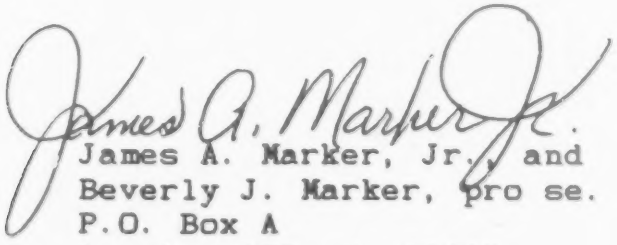
Respectfully submitted,

Beverly J. Marker

Addresses and signature of Major James A. Marker, Jr., USAF is on the next page.

This is being prepared to be used, if needed, as part of any reply or other paper my wife may need to submit to this United States Supreme Court on our behalf. I am preparing to leave the United States on Air Force Orders and business in a few days and I do not wish to leave my wife with any impediment in being able to communicate with this Court on our behalf. I have complete confidence in her and anything she prepares has my full support.

Respectfully submitted,



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